

material, the court must consider whether redacting the material will allow for disclosure. *Id.* at 425.

Defendants have demonstrated that public disclosure of the BWC footage will lead to particularized harm by violating the privacy rights of third parties. [Dkt. No. 158 at 10.] In *Sampson v. City of El Centro*, the court found that the public disclosure of video of a police encounter that included third parties violated the privacy rights of those third parties and thereby resulted in particularized harm. 2015 WL 11658713 at *6 (S.D. Cal. August 31, 2015). Similarly, in this case, the BWC footage implicates the privacy interests of third parties depicted in the video, including: a nurse, New Town Fire Department (“NTFD”) personnel, and residents of Plaintiff’s building. [Dkt. No. 158 at 10.] Thus, Defendants have demonstrated that public disclosure will lead to particularized harm by violating these third parties’ privacy rights.

However, Defendants have failed to demonstrate that the private interest in maintaining the protective order outweighs the public interest in disclosure. When making this determination, courts within the Ninth Circuit consider the seven factors set out by the Third Circuit in *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995). *In re Roman*, 661 F.3d 417 at 424. In this case, the balance of these factors weighs strongly in favor of public disclosure, largely due to the public safety concerns at issue and the strong public interest in the alleged use of excessive force by police. *See Sampson*, 2015 WL 11658713 at *9-10 (finding that the use of excessive force by police and the use of BWC by police are issues of public importance, a factor that is particularly salient when one party is a public entity).

Because the public interest in disclosure strongly outweighs the private interest in maintaining the protective order, this Court must allow public disclosure of the BWC footage. However, caselaw within the Ninth Circuit is persuasive in allowing this Court to require the redaction of the BWC footage to protect the privacy interests of third parties. *See e.g., Dominguez v. City of Los Angeles*, 2018 WL 633661 (C.D. Cal. April 23, 2018) (allowing disclosure of video of a police shooting but requiring that the faces of third parties be blurred); *Sampson*, 2015 WL 11658713 at *11 (allowing disclosure of the decedent’s encounter with police but requiring that the plaintiff blur faces of third parties prior to public disclosure).

Thus, while this Court must allow the public disclosure of the police BWC footage at issue, this Court may order the parties to redact the BWC footage to protect the privacy rights of third parties.

IV. STATEMENT OF FACTS

Plaintiff is a U.S. Army veteran. [Plaintiff's Decl., ¶ 5.] He was honorably discharged from the Army due to Post-Traumatic Stress Disorder ("PTSD") and physical injuries he sustained while on active duty in the Army. [*Id.*] On July 25, 2019, the NTPD received a call from a crisis hotline worker affiliated with the VA. [Dkt. No. 101 at ¶ 16; Dkt. No. 158 at 4.] The caller informed the NTPD that Plaintiff expressed suicidal thoughts. [Dkt. No. 158 at 4.]

Defendant officers Adams and Bell responded to the call and went to Plaintiff's apartment to conduct a welfare check. [Ex. A, 1:57; Ex. B, 2:52.] Defendant officers asked Plaintiff if they could enter Plaintiff's apartment, and Plaintiff invited them in. [Ex. A, 2:25-40; Ex. B, 3:30-45.] Defendant Bell began to search Plaintiff's apartment. [Ex. A, 2:44-48; Ex. B, 3:51-55.] Plaintiff asked Defendant officers to stop searching his apartment and an oral argument ensued. [Ex. A, 2:47-4:15; Ex. B 3:56-5:14.] Plaintiff ultimately asked Defendant officers to leave his apartment, but they refused. [Ex. A, 4:08; Ex. B, 5:09.] Plaintiff then attempted to call 911. [Ex. A, 4:09-32; Ex. B 5:20-5:43.] Defendant officers responded by taking Plaintiff's phone and arresting him. [Ex. A, 4:33-5:03; Ex. B, 5:44-6:14.]

Defendant officers initially decided to take Plaintiff to the Central Division to be evaluated by members of the Mental Evaluation Unit. [Dkt. No. 158 at 4.] However, because Plaintiff allegedly complained of a pre-existing injury and insisted that the handcuffs be repositioned, Defendant officers requested the response of an ambulance to transport Plaintiff to Good Samaritan Hospital. [*Id.*] At the hospital, Plaintiff was sedated and a catheter was inserted into his penis without his consent. [*Id.* at 2.]

Plaintiff's interaction with Defendant officers on August 27, 2019 was captured on the BWC of Defendant officers and non-party NTPD Sergeant Cane. [Ex. A; Ex. B; Ex. C.]

V. DISCUSSION

A. Legal Standard

Generally, the public may access documents and information produced during discovery. *In re Roman*, 661 F.3d at 424; *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002); *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999). However, under Rule 26, courts may protect discovery materials from disclosure for good cause. Fed.R.Civ.P. 26(c)(1). The party moving to protect discovery materials from

disclosure bears the burden of proving good cause by showing “that specific prejudice or harm will result” from the public disclosure. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003); *see also Phillips*, 307 F.3d at n. 1.

When a party moves to protect discovery from disclosure pursuant to Rule 26(c), courts first must determine whether disclosure of information to the public will result in particularized harm. *In re Roman*, 661 F.3d at 424; *Phillips*, 307 F.3d at 1211; *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Beckman*, 966 F.2d at 476. The burden rests on the party opposing disclosure to “allege specific prejudice or harm.” *Id.*

If a court finds that particularized harm will result from disclosure, it must balance the public and private interests to determine if there is good cause for a protective order. *Phillips*, 307 F.3d at 1211. The Ninth Circuit has “directed courts doing this balancing to consider the factors identified by the Third Circuit in *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995).” These factors are:

- (1) whether disclosure will violate any privacy interests;
- (2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- (3) whether disclosure of the information will cause a party embarrassment;
- (4) whether confidentiality is being sought over information important to public health and safety;
- (5) whether the sharing of information among litigants will promote fairness and efficiency;
- (6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- (7) whether the case involves issues important to the public.

In re Roman, 661 F.3d at n.5 (quoting *Glenmede Trust*, 56 F.3d at 483).

Even if a court finds that the private interest in protecting the discovery material outweighs the public interest in disclosure, it must consider if redacting the discovery material will allow disclosure. *Id.* at 425. “[I]n determining whether to protect discovery materials from

disclosure under Rule 26(c), a court must not only consider whether the party seeking protection has shown particularized harm, and whether the balance of public and private interests weigh in favor, but also keep in mind the possibility of redacting sensitive material.” *Id.*

“Cases involving a civil rights claim against a police department should be moderately pre-weighted in favor of disclosure from the outset.” *Harmon v. City of Santa Clara*, 323 F.R.D 617, 625 (N.D. Cal. 2018) (internal quotation marks omitted). And where the moving party asks the court to protect discovery of police BWC footage from public disclosure, as is the case here, courts have generally found that there is no particularized harm and, even if there is particularized harm, that the public interest in disclosure outweighs the private interest in protecting the BWC footage. *See e.g., id.; Dominguez*, 2018 WL 6333661 at *3; *Gonzales v. City of San Jose*, 2020 WL 4430799 (N.D. Cal. July 31, 2020).

However, even where the *Glenmede* factors weigh in favor of full disclosure of the video, some courts have ordered the faces of non-parties be blurred in recognition of the significant privacy interests that non-parties may have in a video of a police encounter. *See e.g., Perez v. City of Fresno*, 519 F.Supp.3d 718 (E.D. Cal. 2021); *Dominguez*, 2018 WL 6333661 at *3-4; *Sampson*, 2015 WL 11658713 at *7.

B. Particularized Harm

Defendants argue that public disclosure of the BWC footage will lead to particularized harm by (1) endangering law enforcement, (2) tainting the jury pool, and (3) violating the privacy rights of third parties. [Dkt. No. 158, 10-11.] Only Defendants contention that public disclosure of the BWC footage violates the privacy rights of third parties rises to the level of particularized harm.

Defendants argue that Plaintiff will release the BWC footage to incite hate and violence against Defendant officers. [*Id.*] Defendants claim rests on Defendants’ assertions that Plaintiff’s reaction to the arrest was “suspicious” and “highly disturbing,” noting that his demeanor “suggests he lacks the ability to control his temper.” [*Id.* at 10.] Defendants also rely on Plaintiff’s PTSD diagnosis as a basis for their concern. [*Id.*] In their Supplemental Opposition, Defendants requested that the Court delay release of the videos until the result of a March 17, 2023 mental health examination of Plaintiff is available to determine if Plaintiff poses a risk to Defendant officers. [Dkt. No. 175, 1-2.] Defendants failed to lodge this report with the Court.

Nonetheless, Defendants’ argument that Plaintiff poses a danger to Defendant officers fails to meet the specificity required to establish particularized harm. The Ninth Circuit has held that “[b]road allegations of harm” are insufficient to demonstrate particularized harm under Rule 26(c). *Beckman*, 966 F.2d at 476. Defendants have failed to provide the Court with any specific evidence or reasoning to indicate that Plaintiff will release the BWC footage to endanger Defendant officers. Thus, Defendants claims that Plaintiff poses a danger to Defendant officers are based on such “broad allegations” stemming from speculation and lacking the requisite specificity.

Moreover, courts have found that when the police interaction depicted in the BWC footage occurred in public, as was the case here, fears of harm due to identifying law enforcement are insufficient to establish particularized harm. *Dominguez*, 2018 WL 6333661 at *3 (“[n]ot only is the instant lawsuit highly public in nature, but the shooting of [the decedent] took place in a public setting and was apparently witnessed by numerous individuals. This is not a situation where a party is seeking the release of videos depicting covert police conduct which could compromise any undercover operations”); *c.f. Harmon*, 323 F.R.D at 624 (finding that even though the officers in the video were members of an undercover unit, claims that publicizing the video would imperil the officers did not establish a particularized harm because the incident took place in public and the police officers have a diminished privacy interest because the police department is a public agency.)

Defendants also argue that release of the BWC footage would taint the pool of potential jurors. [*Id.* at 10.] However, courts have repeatedly held that fears that release of BWC footage may taint the jury pool are insufficient to establish particularized harm. *Sampson*, 2015 WL 11658713 at *7 (finding defendant City’s allegation that release of the BWC footage could taint the jury pool too speculative to establish a particularized harm); *Gonzales*, 2020 WL 4430799 at *4 (“[d]efendants’ broad conjecture about what might happen [to the jury pool] if the BWC footage is publicly disclosed does not constitute [a] plausible allegation of particularized harm”) (internal quotation marks omitted).

Finally, Defendants argue that the release of the BWC footage would violate the privacy rights of third parties. [Dkt. No. 158 at 10.] In *Sampson*, the court found that public release of BWC footage implicating the privacy rights of third parties demonstrated particularized harm, even though the Defendant officers’ privacy interests were diminished. 2015 WL 11658713 at

*6. In this case, as Defendants point out, the video footage implicates the privacy rights of several third parties including: a nurse, NTFD personnel, and residents of Plaintiff's building. [Dkt. No. 158 at 10.] Thus, here, much like in *Sampson*, release of the BWC footage creates particularized harm by implicating the privacy rights of third parties.

C. *Glenmede* Factors

Because disclosure of the BWC footage to the public will result in particularized harm by implicating the privacy interests of third parties, the Court must balance the public and private interests. In this case, the balance of the *Glenmede* factors strongly suggests that there is not good cause to maintain the protective order.

i. Privacy Interests

The Court must consider whether releasing the video implicates any privacy interests. *Glenmede*, 56 F.3d at 483. As discussed, disclosure will violate the privacy interests of third parties, and therefore this factor weighs in favor of maintaining the Protective Order. However, the privacy concerns can easily be guarded against by blurring the faces of third parties, limiting the weight of this factor as the Court is required to consider whether such efforts should allow disclosure. *See In re Roman*, 661 F.3d at 425; *see e.g., Sampson*, WL 11658713 at *7. Moreover, the parties have both acknowledged that this concern can be remedied by blurring the faces of third parties. [Dkt. No. 158 at 10-11.]

ii. Legitimate Purpose and Embarrassment

The Court must next consider whether the information is being sought for a legitimate purpose or for an improper purpose and whether disclosure would cause a party embarrassment. *Glenmede*, 56 F.3d at 483. While Defendants claim that Plaintiff is seeking the BWC footage to incite violence against Defendant officers, Defendants have failed to provide any evidence of this motivation and have thus failed to demonstrate that Plaintiff has an improper purpose for seeking this footage. [Dkt. No. 158; Dkt. No. 175.] Moreover, Plaintiff's intention to "[draw] attention to an issue of public concern," [Dkt. No. 179 at 3], alleged police misconduct, is legitimate because it implicates an "important societal interest." *Sampson*, 2015 WL 11658713 at *9.

Additionally, Defendants have not alleged that disclosure of the information will cause a party embarrassment [Dkt. No. 158; Dkt. No. 175]. To satisfy this factor, Defendants had the

burden of demonstrating embarrassment with specificity, as vague or general allegations of embarrassment are insufficient. *Id.* Thus, the second and third *Glenmede* factors weigh against maintaining the Protective Order.

iii. Health and Safety, Public Entity, Importance to Public

The Court next considers the related factors of whether the BWC footage is important to public health and safety, whether a party benefitting from the Protective Order is a public entity, and whether the case involves issues important to the public. *Glenmede*, 56 F.3d at 483.

In line with other courts in the Ninth Circuit, this Court found at the March 6, 2023 hearing that the BWC footage of the police interaction is of public concern. *Sampson*, 2015 WL 11658713 at *10 (finding that allegations of improper police treatment of minorities is an issue of importance to the public as is the use of BWC by law enforcement); *Gonzales*, 2020 WL 4430799 at *4 (“[t]he public has a strong interest in knowing whether members of their tax-funded police department who swear to protect and serve them are using excessive force in violation of the United States Constitution, thereby endangering the health and safety of the community”); *Harmon*, 323 F.R.D. at 624 (“[t]he public unquestionably holds a hefty interest in police force transparency, and especially so when fundamental rights are at stake”).

Public interest is particularly legitimate where one of the parties is a public entity, as is the case here. *Sampson*, 2015 WL 11658713 at *9. Moreover, Defendants primarily benefit from the Protective Order, and it is undisputed that Defendant City is a public entity and Defendant officers are employees of a public entity. Thus, each of these factors weighs against maintaining the Protective Order as it benefits the City and the BWC footage implicates allegations of police misconduct, an issue important to public safety.

iv. Fairness and Efficiency

Finally, the Court evaluates whether the sharing of the information among litigants will promote fairness and efficiency. *Glenmede*, 56 F.3d at 483. Plaintiff claims that the confidentiality designation degrades the quality of the BWC footage and that Plaintiff needs the BWC footage in its original form to adequately litigate this case. [Dkt. No. 158 at 9.] Defendants, in their Supplemental Opposition, provided the declaration of Patty Norman, a paralegal assigned to the Police litigation Unit. [Dkt. No. 175-4.] Ms. Norman described the process of adding the watermark with the confidentiality designation, stating that she is not

aware of any degradation. [*Id.*] As Plaintiff noted, however, this Declaration is insufficient to establish that the integrity of the footage is not affected by the watermark. [Dkt. No. 179 at 3.] At the March 6, 2023 hearing, this Court requested that Defendant City submit a declaration by an audio-visual technician attesting to whether the watermark affected the quality of the video, not a declaration describing the process for adhering the watermark to the footage.

However, since the parties have already shared the BWC footage and the Defendants have not made an argument based on reliance, this factor is not entirely applicable. *Sampson*, 2015 WL 11658713 at *10 (finding that this factor is not entirely applicable where the parties have already exchanged the information at issue); *Beckman*, 966 F.2d at 475 (holding that this factor may weigh against disclosure if the party opposing disclosure relied on the protective order in pursuing its litigation strategy).

Considering the *Glenmede* factors, the public interest in disclosure of the BWC footage strongly outweighs the private interest in maintaining the Protective Order. Therefore, Defendants have failed to meet their burden of demonstrating good cause for maintaining the Protective Order.

D. Redaction of Footage

Many courts within the Ninth Circuit have allowed the public disclosure of video footage of police encounters, while ordering the blurring of faces of non-parties. *See e.g., Dominguez*, 2018 WL 6333661 at * 3-4; *Sampson*, 2015 WL 11658713 at *7; *Perez*, 519 F.Supp.3d at 730-1. In *Perez*, the court reasoned that “[e]ven though the *Glenmede* factors may weigh in favor of disclosure of the video as a whole, it is unclear why the Court cannot take additional measures to address and safeguard the privacy interest of third-parties and parties to a lawsuit, while also permitting disclosure of the material aspect of the video.” 519 F.Supp.3d at 730. Likewise, in *Dominguez*, this Court allowed for the public release of BWC footage of a police shooting of the decedent in redacted form, even after determining that “Defendant City has not made a showing of particularized harm that outweighs the public interest in disclosure.” 2018 WL 6333661 at *3. Thus, while the *Glenmede* factors indicate that there is not good cause for the Protective Order in this case, the weight of the caselaw is persuasive in supporting an order requiring the parties to blur the faces of third parties.

However, courts have generally found that police officer defendants are not entitled to the same treatment due to the public nature of their work. *See e.g., Dominguez*, 2018 WL 6333661 at *3 (requiring the parties to blur the faces of third parties, but not the face of the officer involved due to the diminished privacy interests of public actors subject to legitimate public scrutiny); *Sampson*, 2015 WL 11658713 at *11 (allowing public disclosure of video of a police encounter and requiring only the blurring of the faces of non-parties); *c.f. Perez*, 519 F.Supp.3d at 729 (differentiating private ambulance company employees from police officers who are “highly visible to the public, many now are required to wear body cameras, and they know that their actions in restraining or using force against an individual will be scrutinized”).

In *Sampson*, the court formulated a protocol for the redaction and public distribution of video footage previously placed under a protective order. 2015 WL 11658713 at *11. The court ordered that the plaintiff bear the cost and responsibility of blurring the faces of third parties. *Id.* The court also required that the plaintiff’s counsel provide the redacted version to the defendant’s counsel for review prior to public dissemination, allowing the defendant ten business days to review the redacted footage. *Id.* The court reasoned that if the defendant believed the redacted footage was not in compliance with the court’s order, the defendant’s counsel could notify the plaintiff’s counsel of noncompliance during that timeframe. *Id.*

VI. CONCLUSION

Defendants have failed to meet their burden of establishing good cause to maintain the confidentiality of the police BWC footage under the Stipulated Protective Order pursuant to Rule 26(c), and therefore, this Court must allow the public disclosure of the BWC footage. However, this Court may order the parties to redact the BWC footage to protect the privacy interests of third parties.

Applicant Details

First Name **Camille**
 Last Name **Anjewierden**
 Citizenship Status **U. S. Citizen**
 Email Address canjew@law.byu.edu
 Address

Address
Street
2122 S 850 E
City
Bountiful
State/Territory
Utah
Zip
84010
Country
United States

Contact Phone Number **8013308249**

Applicant Education

BA/BS From **Brigham Young University**
 Date of BA/BS **June 2021**
 JD/LLB From **Brigham Young University--J. Reuben Clark Law School**
<https://law.byu.edu/>
 Date of JD/LLB **April 25, 2024**
 Class Rank **30%**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Public Law**
 Moot Court Experience **Yes**
 Moot Court Name(s) **International Law and Religion Moot Court, Córdoba**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Jones, Cree
creejones@law.byu.edu
801 422-4407

Jensen, Eric
jensene@law.byu.edu
801 422 -2159

Moore, David
moored@law.byu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CAMILLE ANJEWIERDEN

(801) 330-8249 | canjew@law.byu.edu

June 10, 2023

Judge Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Judge Sánchez:

My name is Camille Anjewierden, and I am a first-generation law student going into my third year of law school. I hope to eventually work in the federal government or public interest arenas, and believe that a clerkship at the United States District Court, Eastern District of Pennsylvania under your direction would be an invaluable experience in preparing me for that career. In addition to my interest in the district court, I would love an opportunity to live and work in such a beautiful and historic place.

My law school experience has given me many diverse opportunities to improve my legal skills, including assisting numerous professors with research, studying international trade regulations as an intern at the United Nations in Switzerland, and contributing to civil rights litigation and advocacy work for people who have faced religious discrimination. Though these experiences were seemingly unconnected, each of them contributed to my improvement as a legal researcher and writer. Throughout law school, I have learned hard skills like how to cite cases and statutes for a law journal, and soft skills, like how to contribute as an individual while still being a vital member of a team. As a judicial clerk, I hope to build on these skills and continue my path to contributing to something bigger than myself.

In my application, you will find my updated resume and law school transcript, undergraduate transcript, and a 15-page excerpt of a paper I wrote for my final grade in a National Security Law course last semester. If you have interest in seeing the full version of the paper, I am happy to provide it to you. I genuinely appreciate you taking the time to review these materials, and hope to hear back from you.

Sincerely,



Camille Anjewierden

CAMILLE ANJEWIERDEN

(801) 330-8249 | canjew@law.byu.edu

EDUCATION

J. Reuben Clark Law School, Brigham Young University, Provo, UT

Juris Doctor Candidate, Apr 2024

- GPA, 3.60; Top 30%
- Awarded, Dean's Scholarship
- Associate Editor, Journal of Public Law, 2022–2023
- Class Representative, Student Bar Association, 2022–2024

Brigham Young University, Provo, UT

Bachelor of Arts, Political Science, Jun 2021

- GPA, 3.95; *magna cum laude*
- Emphasis, International Strategy and Diplomacy; Minor, Ancient Near Eastern Studies

EXPERIENCE

The Sikh Coalition, New York City, NY; Remote

Legal Intern, Apr 2023– Current

- Assist with legal projects including reviewing amicus briefs and judicial opinions, drafting a hate crime guide for law enforcement, and civil rights casework

International Center for Law and Religion Studies, Provo, UT

Legal Fellow, Jun 2022– Current

- Assisted Professor David Moore with UN Faith for Rights toolkit online learning webpage
- Partnered on research with Professor Brett Scharffs on national security and religious freedom
- Participated in numerous international religious freedom conferences, including as Executive Committee Chair for the International Law and Religion Symposium, Oct 2022 and 2023

United Nations Economic Commission for Europe, Geneva, Switzerland

Legal Intern, Jan 2023– April 2023

- Conduct international law research regarding trade and the circular economy
- Other responsibilities include: general research; organizing conferences and meetings; producing reports, briefing papers, etc.; communications

Office of General Counsel, The Church of Jesus Christ of Latter-day Saints, Salt Lake City, UT

Legal Extern, May 2022–Jun 2022

- Attended regular meetings with legal counsel for various organization areas and departments
- Completed numerous research projects related to federal nonprofit tax law, agriculture and property law, corporate acquisitions, and international law

Schmutz and Mohlman, LLC, Bountiful, UT

Legal Assistant, Aug 2014–Aug 2017 and May 2020–Aug 2020

- Documented personal injury client medical records and accident reports, summarized health histories, and compiled settlement brochures

PERSONAL

- Published author in UVU Security Journal, Spring 2021, “Where Should the United States Stand on the Nuclear Ban Treaty?”
- Participant in BYU Law's Human Rights Clinic and Community Legal Clinic
- Undergraduate Political Science teaching assistant studying British Politics

Name: Camille P Anjewierden
StudentID: 886219642

STUDENT PROGRESS REPORT

Date Printed: May 20, 2023

BRIGHAM YOUNG UNIVERSITY
J. REUBEN CLARK LAW SCHOOL
PROVO, UTAH 84602

Cumulative Grade Information						Pre-Law Schools		Degree		Date
Credit Hours: 63.5						GPA: 3.58		BRIGHAM YOUNG UNIVERSITY		
Grade Points: 1611										
Class Standing:										
Catalog		Semester				Catalog		Semester		
Number	Title of Course	Hours	Grade	Professor		Number	Title of Course	Hours	Grade	Professor
Fall Semester, 2021										
505	2 Torts	4.00	3.6	C. Hurt						
510	2 Contracts	4.00	3.7	W. Clayton						
520	2 Property	4.00	3.6	J. Fee						
545	3 Intro to Legal Research & Writ	3.00	3.9	K. Baughman, D. Se...						
552	2 Prof. Development	0.50	P	C. Richards, S. Gr...						
Winter Semester, 2022										
515	2 Civil Procedure	4.00	3.3	D. Thorley						
525	2 Criminal Law 1	3.00	3.9	S. Plamondon						
530	2 Structures of the Constitution	3.00	3.4	M. Steele						
535	2 Legislation & Regulation	3.00	3.4	J. Shobe						
546	3 Introduction to Advocacy	2.00	3.7	K. Baughman, D. Se...						
552	4 Prof. Development	0.50	P	S. Grandy, C. Rich...						
Summer Semester, 2022										
599R	1 Externship	4.00	P	C. Hernandez						
Fall Semester, 2022										
610	1 Business Organizations	3.00	3.1	W. Clayton						
659	2 Public International Law	3.00	3.5	E. Jensen						
666	1 Wills and Estates	3.00	3.8	R. Tippet						
719	1 Intl Envrnmntl Law	3.00	3.7	C. Galli						
788R	7 Int'l Human Rights Clinic	2.00	P	D. Moore						
792R	3 Journal of Public Law Cocurr...	1.00	P	A. Hickman Pierson						
550	1 Lecture Series 1	0.50	P	E. Jensen, L. Mott						
Winter Semester, 2023										
599R	4 Externship	9.00	P	C. Galli, G. Smith						
620	3 National Security Law	3.00	3.6	E. Jensen, G. Smith						
792R	3 Cocurricular Pgms	1.00	P	A. Hickman Pierson						

Degree Awarded:

Graduation Date:

Comments:

CREE JONES
Associate Professor of Law

J. REUBEN CLARK LAW SCHOOL
BRIGHAM YOUNG UNIVERSITY
512 JRCB, PROVO, UTAH 84602-8000
(801) 422-4407
creejones@law.byu.edu

June 15, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend my student, Camille Anjewierden, who has applied for a clerkship in your chambers. Camille is a strong analytical thinker, a hard worker, and I am confident she will be an excellent clerk.

I am an associate professor at BYU Law School and my research and teaching are focused on property law, international trade, international investment law, and empirical legal studies. I had the pleasure of selecting Camille to participate in the Geneva Chapter of the BYU Global Law Seminar during winter semester 2023. As part of the seminar Camille completed a semester long externship program with the United Nations Economic Commission for Europe (UNECE). Over the course of the fall semester, I had the opportunity to work closely with Camille as we worked together to secure her placement at the UNECE. I also know from discussions with the head of the UNECE, Elisabeth Tuerk, who supervised Camille's work, that Camille did a phenomenal job executing her assignments and supporting the work of the UNECE.

This past Spring, I also had the opportunity to work with Camille as a TA for my international commercial arbitration academy, held in Geneva, Switzerland. This is a one-week intensive simulation exercise for rising 2Ls and is designed to introduce the students to the practice of international commercial arbitration. Camille was incredibly responsible and reliable throughout the academy, faithfully executing every assignment that was given to her. She was also very easy to work with and enjoyable to be around.

I know Camille would be a great colleague to have in your chambers. If you have any questions or need any additional information, please feel free to call or email me at your convenience.

Sincerely,

Cree Jones

Cree Jones - creejones@law.byu.edu - 801 422-4407

ERIC TALBOT JENSEN
Robert W. Barker Professor of Law

J. REUBEN CLARK LAW SCHOOL
BRIGHAM YOUNG UNIVERSITY
504 JRCB
PROVO, UTAH 84602-8000
(801) 422-2159
E-MAIL: jensene@law.byu.edu

June 16, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I whole-heartedly recommend Camille Anjewierden to you as a superb judicial clerk. Camille is a great writer, a talented researcher, and a deeply analytical thinker. She combines vital intellectual and analytical qualities with tremendous interpersonal and collaborative skills, making her a truly superb clerk candidate.

My first consistent interaction with Camille came in my role as Faculty Director of the Global Law Programs for the Law School. Camille applied for and was accepted to be an intern with the United Nations Economic Commission for Europe. Not only did Camille have to compete for the right to represent BYU law school as a global law fellow, but this internship is open to applicants from all over the world. As such, it is extremely competitive. Camille was selected and did a superb job. Her office at the UN absolutely loved her. Her extensive understanding of international law, coupled with her work ethic and commitment to excellence made her a superb intern.

Camille has also been a student in both my Public International Law class and my National Security Law class. In both cases, she was a very impressive student. Camille is always prepared for class and has not only understood the reading material but incorporated it in a way that makes her able to distill the principles for easy application to other varied scenarios. Her contributions are always on point and increase the learning environment as a whole. We often used a "problem solving" approach in both classes and Camille is a very cooperative learner. She works extremely well with others, lifting the work of the group through her own participation. I see in her the exact qualities that will make her a very successful clerk in your chambers.

For both of these classes, I offer the students the option of taking a final exam or writing a paper. I explain up front that taking the paper option will require significantly more time and effort. Despite this, Camille opted to write an article length paper in both cases. I am very glad she did. Her papers are excellent. If you have not read them as part of the application process, I strongly encourage you to do so. She wrote on two very difficult topics, the current value and possible revision of the Nuclear Non-proliferation Treaty and an international law analysis of women's rights in Afghanistan. She did a fantastic job in both cases and I have encouraged her to submit both for publication. Camille's writing is clear and concise. She can make difficult and technical concepts understandable to the uninformed reader. Her writing skills will serve you well as your clerk.

Additionally, writing in international law requires much more discerning and committed research than merely looking on Lexus or Westlaw. Camille not only accomplished in-depth international law issues, but also took on extremely technical and scientific topics. Despite these added complexities, she did a fantastic job of researching her topic. As with her writing skills, Camille will quickly become your best researcher.

Finally, Camille is also a great colleague and co-worker. She works extremely well with others. In combined work settings, she is a great leader and supportive follower. She has all the interpersonal skills to make her a great member of your team. I strongly encourage you to interview her. That will make your decision easy.

Please contact me if there is any additional information I can provide, at (801) 422-2159, and jensene@law.byu.edu.

Sincerely,

Eric Talbot Jensen

Eric Jensen - jensene@law.byu.edu - _801_ 422 -2159

DAVID H. MOORE
Sterling and Eleanor Colton
Endowed Chair in Law

J. REUBEN CLARK LAW SCHOOL
BRIGHAM YOUNG UNIVERSITY
534 JRCB, PROVO, UTAH 84602-8000
(801) 422-8549
moored@law.byu.edu

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Camille Anjewierden for a clerkship in your chambers. I have had the opportunity to get to know Camille in a variety of contexts. First, Camille was a student in my International Human Rights Clinic. In that class, she assisted one of the seven Commissioners of the Inter-American Commission on Human Rights by monitoring the human rights practices of certain countries in Latin America. Second, during her time as a fellow of the International Center for Law and Religion Studies, Camille worked on a project I spearheaded for the United Nations Office of the High Commissioner for Human Rights. The project was designed to increase dialogue and action among faith leaders in support of human rights. Camille reviewed an extensive website looking for content that might be problematic to relevant audiences. Finally, Camille spent a semester in Geneva interning with the United Nations Economic Commission for Europe through a program I co-direct. I was able to visit Camille in Geneva while she was interning. Based on these interactions, I can strongly recommend Camille for a clerkship.

Camille has an excellent academic record. She graduated magna cum laude as an undergraduate and has continued to excel in law school, where she is in the top 30 percent of her class. Her work demonstrates an ability to deal with both detail and nuance and to home in on relevant facts. She is also able to manage many demands without undue stress. Instead, Camille demonstrates maturity and professionalism. Camille was the only BYU Law School student in Geneva during the semester she interned. She handled herself and her responsibilities with confidence and poise.

On a personal level, Camille is easy to work with. She gets along well with classmates and faculty alike. Indeed, she has been elected twice to serve as class representative to the Student Bar Association.

In sum, on both personal and professional levels, Camille would be a positive addition to chambers. I am pleased to recommend her to you. Should you wish to discuss her application further, please do not hesitate to contact me at 801-808-0223 or moored@law.byu.edu.

Best regards,

David H. Moore

David Moore - moored@law.byu.edu

The Non-Proliferation Treaty of 1968:

How it is failing and next steps to ensure global security

Camille Anjewierden

April 2023

Table of Contents

I. Introduction..... 3

II. The Nonproliferation Treaty of 1968 3

 1. Text of the Treaty..... 3

 2. History of Compliance with the NPT 4

III. Nuclear Weapons Policy Today..... 6

 1. Iran Case Study 6

 2. Potential for Nuclear Terrorism 6

 1. Is the NPT fulfilling its purpose? 8

 2. Is it realistic to believe that no more countries will eventually go nuclear? 13

V. What comes after the NPT?..... **Error! Bookmark not defined.**

 1. Option 1: A New International Agreement **Error! Bookmark not defined.**

 2. Option 2: Defensive Strategies **Error! Bookmark not defined.**

 3. Possible Legal Challenges to Prioritizing Missile Defense **Error! Bookmark not defined.**

VI. Conclusion **Error! Bookmark not defined.**

I. Introduction

[Part of this introduction has been omitted for length]

This article will begin with a description of the Nonproliferation Treaty of 1968 and its requirements for states which are party to it. It will then discuss the history of compliance with the NPT and give a case study of Iran's nuclear capabilities, as well as a description of the purpose of the NPT. The article will then analyze whether the NPT is currently fulfilling that purpose, whether it has "run its course," and whether it is reasonable to believe that no other states will acquire nuclear weapons. Finally, the article will discuss what US policies should replace the NPT and possible challenges to potential new policies, including how to ensure other nuclear powers do not feel destabilized and whether new policies would violate current international law, including the NPT.

II. The Nonproliferation Treaty of 1968

1. Text of the Treaty

The Nonproliferation Treaty of 1968 imposes requirements and limitations on non-nuclear-weapon states (those who did not have nuclear weapons at the time of the treaty) and nuclear weapon states (those who did: the United States, China, France, the United Kingdom, and Russia).¹

Article I of the treaty forbids nuclear-weapon states from transferring control of nuclear weapons to any non-nuclear state and instructs nuclear-weapon states not to assist or encourage any non-nuclear-weapon state to manufacture or acquire nuclear weapons.² Article II requires that non-nuclear-weapon states do not manufacture or otherwise acquire nuclear weapons, and

¹ NPT, *supra* note 8.

² *Id.*

do not seek or receive assistance in manufacturing nuclear weapons.³ Article III binds all non-nuclear-weapon state parties to the treaty to abide by International Atomic Energy Agency (IAEA) safeguards and to allow verification of treaty compliance.⁴ It also requires that all states party to the agreement avoid providing non-nuclear-weapon states with special fissionable material or the equipment or material to produce it unless it is subject to IAEA safeguards.⁵

Article IV of the treaty protects the right of all parties to research nuclear energy for peaceful purposes.⁶ Article V requires all parties to the treaty to ensure that the benefits of peaceful nuclear use are available to non-nuclear-weapon states without discrimination.⁷ Article VI requests that states party to the treaty “undertake to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”⁸ Finally, Article VII protects the right of any group of states to create regional treaties assuring “total absence of nuclear weapons in their respective territories.”⁹

At the time of its origin in 1968, the NPT essentially had three purposes: 1) to prevent wider dissemination of nuclear weapons, 2) to “achieve cessation of the arms race and undertake effective measures in the direction of nuclear disarmament”, and 3) to facilitate IAEA safeguards on peaceful nuclear activities.¹⁰

2. History of Compliance with the NPT

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ NPT, *supra* note 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

In the 55 years since the NPT was signed, at least five states have acquired nuclear weapons, four of which are currently believed to have them. South Africa announced in the 1990s that it previously had secret nuclear weapons which Israel helped it produce, but had destroyed them before joining the NPT in 1991.¹¹ Israel has never been a party to the NPT, and to date has never acknowledged that it has nuclear weapons, but is considered a “de-facto” proliferated state.¹² North Korea withdrew from the NPT in 2003, and is generally also considered a proliferated state despite the IAEA being unable to officially verify this.¹³ Like Israel, India and Pakistan were never parties to the NPT, but are both known to possess nuclear weapons due to performing public testing in 1998.¹⁴

In addition to unapproved nuclear-weapon states, there are also nuclear threshold states, which have the “technical capability and fissile material” necessary to build a nuclear weapon.¹⁵ The NPT limits non-nuclear states from “manufactur[ing] or otherwise acquir[ing]” nuclear weapons, but does not place specific limitations against having the capacity to manufacture them.¹⁶ Therefore, nuclear threshold states are not in violation of the NPT (though some of them may be in violation of other arms control agreements, such as Iran with the JCPOA¹⁷). Opinions differ on what exactly the qualifications are to become a nuclear threshold state, but generally, industrialized states with substantial nuclear technology and the necessary materials to build a

¹¹ Kelsey Davenport, *Nuclear Weapons: Who Has What at a Glance*, ARMS CONTROL ASSOCIATION, January 2022, available at <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Annah Ibraheem and William Alberque, *Iran approaches the nuclear threshold*, IISS, November 10, 2022, available at <https://www.iiss.org/blogs/analysis/2022/11/iran-approaches-the-nuclear-threshold>.

¹⁶ NPT, *supra* note 8.

¹⁷ *Iran and the NPT*, UNITED STATES INSTITUTE FOR PEACE, January 22, 2020, available at <https://iranprimer.usip.org/blog/2020/jan/22/iran-and-npt>.

nuclear weapon fit this category.¹⁸ This list often includes Australia, Brazil¹⁹, Canada, Germany, Japan, the Netherlands,²⁰ and in recent years, Iran.²¹ While not widely considered a nuclear threshold state, some believe that Iraq could also be close to capable of manufacturing nuclear weapons if UN sanctions were removed, particularly due to IAEA reports of missing nuclear equipment and materials.²²

The fact that, since the NPT was signed, at least five states have acquired nuclear weapons and several more arguably have the capacity to manufacture nuclear weapons is concerning because, as the NPT states, “proliferation of nuclear weapons . . . seriously enhance[s] the danger of nuclear war.”²³

III. Nuclear Weapons Policy Today

1. Iran Case Study

[This section has been omitted for length]

2. Potential for Nuclear Terrorism

In addition to rogue states with borderline nuclear capabilities, nuclear terrorism has also become an increasing concern in recent years. As one scholar pointed out, a major challenge is posed by “the relentless advance of science and technology and the accelerating diffusion of nuclear and radiological know-how.”²⁴ As manufacturing capabilities become more advanced, producing the necessary material to build a nuclear weapon becomes easier and therefore more

¹⁸ Carey Sublette, *Other Nuclear Capable States*, NUCLEAR WEAPON ARCHIVE, <https://nuclearweaponarchive.org/Nwfaq/Nfaq7-5.html>.

¹⁹ Davenport, *supra* note 20.

²⁰ Sublette, *supra* note 27.

²¹ USIP, *supra* note 26.

²² Carrie Rosenfeld, *Nations on the Threshold*, ATOMIC ARCHIVE, <https://www.atomicarchive.com/history/cold-war/page-24.html>.

²³ NPT, *supra* note 8.

²⁴ *Id.*

accessible.²⁵ The simpler the process for building a nuclear weapon becomes, the greater the threat of nuclear terrorism.

States willing to violate international law also pose a threat when it comes to nuclear terrorism, because they are more likely to be willing to sell their nuclear weapons to terrorists. North Korea has demonstrated a willingness to sell nuclear materials and information to third parties when it helped Syria to build a plutonium-producing nuclear reactor in 2007 in violation of international law.²⁶ While many believe that sanctions against North Korea can prevent them from selling nuclear materials and information to terrorists, these sanctions may do more harm than good by giving a “cash-strapped regime greater incentives to turn to the nuclear black market.”²⁷ In many ways, the threat of North Korea selling its nuclear capabilities to terrorist organizations is more concerning than the threat of them using those capabilities themselves due to the difficulty of retaliation to a nuclear terror attack.²⁸ Additional methods of deterrence are needed to prevent this possibility from becoming a reality.²⁹

Another significant threat of nuclear terrorism is posed by the potential for nuclear weapon theft. A circumstance where this could be likely is the volatile relationship between India and Pakistan. If tactical nuclear weapons are deployed to the frontlines of this conflict, there is a “clear risk of theft by a rogue field commander or terrorist group.”³⁰ Furthermore, more weapons, smaller weapon sizes, and wider deployment, as appears to be happening in India and Pakistan, lead to a greater probability of nuclear weapon theft.³¹

²⁵ Graham Allison, *Nuclear Terrorism: Did We Beat the Odds or Change Them?*, 7:3 PRISM 3, 13 (2018), available at <https://cco.ndu.edu/News/Article/1507316/nuclear-terrorism-did-we-beat-the-odds-or-change-them/>.

²⁶ *Id.*

²⁷ *Id.* at 13.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Allison, *supra* note 47, at 15.

³¹ *Id.*

Nuclear terrorism is particularly concerning because it poses a significant threat to the current international deterrence regime of Mutually Assured Destruction (MAD). MAD refers to the policy that relies on the threat of retaliation to deter states from ever using nuclear weapons.³² Under this theory, states with nuclear arsenals will never use them against each other because they know that if they use a nuclear weapon, the other state will respond by using their nuclear weapons.³³ However, this doctrine inherently requires easy identification of the attacker for a responsive strike.³⁴ However, terrorists are typically hidden and rarely concentrated in one place.³⁵ MAD cannot function if there is no target for responding to a nuclear attack.³⁶

IV. Inadequacies of the NPT in the Modern World

As explained above, the NPT had three main purposes. First, that non-nuclear weapons states do not manufacture or acquire nuclear weapons or nuclear explosive devices and work with the IAEA for verification of their compliance.³⁷ Second, nuclear weapons states undertake to pursue good faith negotiations toward ending the nuclear arms race and general nuclear disarmament.³⁸ Finally, all parties to the NPT maintain a right to peaceful use of nuclear energy with IAEA safeguards preventing nuclear energy programs from being used for non-peaceful purposes.³⁹

1. Is the NPT fulfilling its purpose?

³² Baruch Fischhoff, Scott Atran and Marc Sageman, *Mutually Assured Support: A Security Doctrine for Terrorist Nuclear Weapon Threats*, 618 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 160, 161 (2008), available at <https://www.jstor.org/stable/40375782>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ NPT, *supra* note 8.

³⁸ *Id.*

³⁹ *Id.*

The fact that five States have acquired nuclear weapons in the 55 years since the NPT was signed (South Africa, Israel, India, Pakistan, and North Korea) can be perceived in one of two ways. It can either be seen as a success for the NPT that only four States have “proliferated” since the Nonproliferation Treaty was signed, or it can be seen as a failure for the NPT because some proliferation has occurred. The same can be said for the fact that there are numerous states that hold “nuclear threshold” status. However, the aim of the NPT was to “prevent wider dissemination of nuclear weapons”: to stop states from sharing nuclear capabilities, materials, etc. at all, and prevent every non-nuclear-weapon state from attaining nuclear weapons capabilities.⁴⁰ This aim was based on the belief that “proliferation of nuclear weapons would seriously enhance the danger of nuclear war”⁴¹ The more states that have nuclear weapons, the greater the chance of increased proliferation through sharing or theft of materials, weapons, plans, etc. The existence of more proliferated states and threshold states indicates that the provisions of the NPT were insufficient to prevent proliferation, and therefore insufficient to accomplish the NPT’s overarching motivation of “avert[ing] the danger of such a war and . . . tak[ing] measures to safeguard the security of peoples”⁴²

There have also been numerous significant violations of non-proliferation where the IAEA has found states (this list includes, Iran, Iraq, North Korea, etc.) in non-compliance with their safeguards.⁴³ Furthermore, “individuals and entities from more than 30 states, including several members of the Nuclear Suppliers Group” were involved in some of these proliferation efforts.⁴⁴ There is also a great deal of concern regarding “the spread of proliferation-sensitive

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² NPT, *supra* note 8.

⁴³ John Carlson, *Is the NPT Still Relevant? – How to Progress the NPT’s Disarmament Provisions*, 2:1 JOURNAL FOR PEACE AND NUCLEAR DISARMAMENT 97-113 (2019), available at DOI: 10.1080/25751654.2019.1611187.

⁴⁴ *Id.*

nuclear technologies (enrichment and reprocessing), and even nuclear weapon designs, particularly through an active black market.”⁴⁵ With nuclear technologies, designs, materials, etc. available to anyone willing to pay, including terrorists, the world becomes dangerously exposed to threats from terror groups, etc. who cannot be traditionally deterred against. These are crucial problems and must be addressed more thoroughly than they have been.

The NPT also encouraged the five nuclear-weapon states to pursue negotiations that would eventually lead to full disarmament.⁴⁶ The most common criticism of the NPT is its failure to achieve progress in the disarmament sphere.⁴⁷ Some even argue that by identifying these five states as “legitimate” nuclear weapons states, the NPT created a status quo where these states have the right to possess nuclear weapons.⁴⁸ Recent news regarding the nuclear programs of the United States and Russia illustrates the weakness of the NPT’s disarmament prong.⁴⁹ This prong

⁴⁵ *Id.*

⁴⁶ NPT, *supra* note 8.

⁴⁷ Joelien Pretorius and Tom Sauer, *When is it legitimate to abandon the NPT? Withdrawal as a political tool to move nuclear disarmament forward*, 43:1 CONTEMPORARY SECURITY POLICY 161-185 (2022), DOI: 10.1080/13523260.2021.2009695.

⁴⁸ *Id.*

⁴⁹ Even 55 years after the order to disarm, the United States and the Russian Federation still hold at least 4,000 nuclear weapons. Bill Chappell, *What happens now after Russia suspends the last nuclear arms treaty with the U.S?*, NPR, February 22, 2023. Near the beginning of the armed conflict in Ukraine, Putin reminded the world of Russia’s nuclear capabilities by putting them on a “special mode of combat duty.” Geoff Brumfiel, *Russia’s nuclear arsenal is huge, but will Putin use it?*, NPR, October 17, 2022. As Russia annexed Ukrainian land in the fall of 2022, Putin stated that Russia would “certainly make use of all weapon systems available to us” if the West threatened the integrity of their perceived Russian territory. *Id.* In February of 2023, Russia decided to “suspend” its participation in the New START arms control treaty with the United States. Chappell, 2023. This treaty requires each country to report on its military operations and equipment, and to allow regular inspection of its nuclear arsenal. *Id.* In a recent interview with NPR, Lynn Rusten, vice president of the Global Nuclear Policy Program at the Nuclear Threat Initiative in Washington, D.C. stated: “Nuclear arms control was treated as something that needs to go on because it’s in the mutual interest . . . [i]t’s been completely infected now by the broader geopolitical differences between the United States and Russia . . . I’m not sure this treaty is going to survive to the end of its duration. And I don’t see how we’re going to have another agreement in place to replace it, if we can’t even get to the negotiating table . . . we are hurtling toward a moment where for the first time in probably 70 years . . . U.S. and Russian nuclear forces will be completely unconstrained.” *Id.* Though there has yet to be any indication that Russia is once again building up its nuclear arsenal, these developments “do[] not bode well for . . . keeping arms racing in check” according to Rusten. *Id.*

also fails to account for the numerous and severe risks to global security that exist when it comes to disarmament in the modern age.

Though the failure of the disarmament prong is likely the NPT's most obvious shortcoming, whether or not disarmament is even the right policy has become a controversial topic in recent years. Many believe that disarmament has moved "beyond our current grasp," and may not only be unachievable but also functionally impossible.⁵⁰ Because this debate is ongoing, failures of the NPT associated with disarmament are not the specific issue this paper is meant to address.

The NPT also encouraged the use of peaceful nuclear energy, monitored by strict adherence to IAEA safeguards.⁵¹ The IAEA safeguards are arguably the most useful element of the NPT because they allow for monitoring and confirmation of compliance with non-proliferation requirements.⁵² When Iran began enriching uranium in the early 2000s, it was the IAEA that reported Iran to the Security Council, resulting in UN sanctions.⁵³ However, there are limitations to the IAEA's ability to verify compliance with this prong of the NPT.⁵⁴ The IAEA has the authority to inspect declared nuclear programs but can do little to ensure compliance in undeclared or secret nuclear facilities.⁵⁵ There is unlikely to be sufficient information to act on a suspicion that a state has a secret nuclear program, presenting a notable challenge to the enforcement of IAEA safeguards.⁵⁶ The IAEA safeguards can only protect the world against known nuclear programs through monitoring and reporting: this alone is not enough to "avert the

⁵⁰ Michael E. O'Hanlon, *Is a World Without Nuclear Weapons Really Possible?*, BROOKINGS, May 4, 2010, available at <https://www.brookings.edu/opinions/is-a-world-without-nuclear-weapons-really-possible/>.

⁵¹ NPT, *supra* note 8.

⁵² *Id.*

⁵³ USIP, *supra* note 26.

⁵⁴ Carlson, *supra* note 65.

⁵⁵ *Id.*

⁵⁶ *Id.*

danger of [nuclear] war” and “safeguard . . . security . . .”⁵⁷ This hole in the policy of the NPT must be filled with some kind of additional strategy to achieve this goal.

Another significant hole in the NPT is its failure to account for or discuss nuclear terrorism. As technology progresses, the prospect of nuclear terrorism becomes more possible.⁵⁸ There is no IAEA mechanism for ensuring that terrorists are not manufacturing nuclear weapons. The focus on state-to-state interactions within the NPT ignores the possibility of proliferated states selling their nuclear weapons or having them stolen by non-state actors.⁵⁹ Obviously, terrorists are not known for their compliance with international law, and this paper acknowledges that it may not be possible to draft a treaty that fully accounts for and effectively deters nuclear terrorism. However, this is a vital topic that must be addressed somehow, and the world must begin implementing mechanisms to protect against it.

There are many in the national security community who argue that the NPT has been highly effective and should not be dismissed as insufficient or broken. Often these scholars point to the pre-NPT projection that there would be 25-30 nuclear-armed states by the 1990s, rather than the nine that we have today.⁶⁰ Proponents of the continued reliance on the NPT also argue that “it makes no sense to attack the NPT over the inactions of some treaty parties”, particularly regarding the NPT’s disarmament provisions.⁶¹ However, a treaty is truly effective only when it does compel party states to action. It is not enough for an international agreement to be a good policy in theory, it must also achieve the aims it was set out to in order to be considered successful and productive.

⁵⁷ NPT, *supra* note 8.

⁵⁸ Allison, *supra* note 47.

⁵⁹ *Id.*

⁶⁰ Carlson, *supra* note 65.

⁶¹ *Id.*

Many of the arguments made by modern supporters of the NPT are based on its established history and its reliable nature. They ask why we would want to replace a “sure thing” with something that might be less effective. Unfortunately, a “better than nothing” approach is simply not sufficient when it comes to nuclear weapons. The NPT certainly still has some provisions that are useful as a jumping-off point, but it needs to be reworked or added to in some way to fulfill its original and vital purpose of protecting the world from nuclear weapons.

2. Is it realistic to believe that no more countries will eventually go nuclear?

Those who say it is realistic to believe the NPT is still functioning and no new nuclear-weapon states will emerge often emphasize the “marked slowdown in the emergence of nuclear states” since 1970, and argue there is “no reason to expect that this pattern will change now.”⁶² Some experts point to the case of Iraq in the 1990s as evidence the NPT’s provision of requiring IAEA monitoring is sufficient because it prevented Iraq from succeeding in its alleged efforts to create a nuclear explosive device.⁶³ However, this is a poor example because this report controversially resulted in the US invasion of Iraq, which yielded no evidence of WMD arsenals or capabilities, and further investigations confirmed that Iraq’s nuclear programs were destroyed after the Gulf War.⁶⁴ There is, therefore, no existing evidence that the IAEA discovery necessarily prevented Iraq from becoming a nuclear weapons state, because there is no evidence of an Iraqi nuclear program at the time.⁶⁵

History has shown that the NPT and its enforcement regimes do not always prevent states from developing nuclear programs. After its unrecognized withdrawal from the NPT, North

⁶² Kenneth N. Waltz, *Why Iran Should Get the Bomb: Nuclear Balancing Would Mean Stability*, 91, no. 4 FOREIGN AFFAIRS 2-5 (2012), available at <http://www.jstor.org/stable/23218033>.

⁶³ Rosenfeld, *supra* note 31.

⁶⁴ *Id.*

⁶⁵ *Id.*

Korea succeeded in developing a nuclear weapons program and building nuclear weapons, despite UN action, sanctions, etc.⁶⁶ Even after action from IAEA reporting and tough sanctions from the Security Council, Iran managed to obtain and enrich enough material to achieve nuclear threshold status.⁶⁷ It is not reasonable to expect that the same policies and means of enforcement will work now when they have failed in the past.

More states than ever before are considered to be anywhere from a few weeks to a few years away from having nuclear capabilities. While “rogue states” like Iran are more frequently talked about in this context, Iran is not alone in being close to nuclear weapons capability. For example, Japan’s civilian nuclear infrastructure is seen by some experts as qualifying them for “breakout capability” to produce such a weapon on short notice.⁶⁸ Nuclear balancing, as illustrated by India and Pakistan simultaneously obtaining nuclear weapons, leads states to believe that if their enemies have nuclear weapons capabilities, they must too.⁶⁹ As more states become proliferated or close to being proliferated, more states will want to be.

The Nonproliferation Treaty was not meant to slow the progress of states that want nuclear weapons capabilities or only allow a few more states to proliferate. The goal was to prevent any state other than the five recognized nuclear weapons states from ever manufacturing or otherwise obtaining nuclear weapons. The failure to achieve this goal clearly demonstrates imperfections in the policy set out under the NPT. Nuclear weapons policy is not a field with room for error, and these holes must be filled by new policies.

⁶⁶ Waltz, *supra* note 84.

⁶⁷ Arshad Mohammed, *Iran can make fissile material for a bomb 'in about 12 days' - U.S. official*, REUTERS, February 28, 2023, available at <https://www.reuters.com/world/middle-east/iran-can-make-fissile-material-bomb-in-about-12-days-us-official-2023-02-28/>.

⁶⁸ Waltz, *supra* note 84, at 2-3.

⁶⁹ *Id.*

Fifty-five years on, the NPT is not effectively fulfilling its purposes of preventing wider dissemination of nuclear weapons, ending the arms race, undertaking disarmament measures, and using IAEA safeguards to ensure peaceful nuclear activities stay peaceful. This isn't to say that the NPT has become fully useless. It sets a helpful expectation that further proliferation is not acceptable under international law, and IAEA safeguards and monitoring have been helpful in identifying violations in the past. However, it is important to recognize that, as discussed above, the NPT is full of policy holes when it comes to today's world, and is not sufficient on its own.

One of the major holes in the current global nuclear deterrence regime is the reliance on Mutually Assured Destruction (MAD). MAD cannot continue to function as it has in a more highly proliferated world where more than just a few world powers have access to nuclear weapons. Specifically, MAD will never be capable of preventing nuclear terrorism for the same reasons that all terrorism is difficult to deter.⁷⁰ Targets are dispersed and attacks are harder to trace, etc. rendering MAD deterrence useless against these types of attacks.⁷¹ In a world where terrorists can create or obtain nuclear weapons, the provisions of the NPT will not be enough to slow proliferation and protect the world from nuclear attacks. The United States should begin preparing for the inevitable before a reality with nuclear terrorism arrives.

[Section V and Conclusion have been omitted for length]

⁷⁰ Baruch Fischhoff, Scott Atran and Marc Sageman, *Mutually Assured Support: A Security Doctrine for Terrorist Nuclear Weapon Threats*, 618 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 160, 161 (2008), available at <https://www.jstor.org/stable/40375782>.

⁷¹ *Id.*

Applicant Details

First Name	Bethany
Last Name	Ao
Citizenship Status	U. S. Citizen
Email Address	bethanyao@uchicago.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>5400 S Harper Ave, Unit 1101</div> <div>City</div> <div>Chicago</div> <div>State/Territory</div> <div>Illinois</div> <div>Zip</div> <div>60615</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	9103981737

Applicant Education

BA/BS From	Northwestern University
Date of BA/BS	June 2017
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 3, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The University of Chicago Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Kovvali, Aneil
akovvali@iu.edu
773-702-9494

Huq, Aziz
huq@uchicago.edu
773-702-9566

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Bethany Ao
5400 South Harper Avenue
Apt. 1101
Chicago, IL 60615

June 12, 2023

The Honorable Juan R. Sánchez
U.S. District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Courtroom 14-B

Dear Chief Judge Sánchez:

I am a rising third-year law student at the University of Chicago Law School, and I am applying to be a law clerk in your chambers for the 2024 term. Before law school, I worked in Philadelphia for nearly four years, and I plan on returning to pursue a career in public interest upon my graduation. Clerking for you will help me develop a deeper understanding of the legal issues I encountered living and working in Philadelphia.

From 2017 to 2021, I was a reporter at the *Philadelphia Inquirer*, covering first the arts, and then the COVID-19 pandemic. My time in journalism taught me how to write with concision, with clarity, and on deadline. Additionally, writing about the existing health disparities that exacerbated the effects of the pandemic led me to pursue a career in law and public service. Last summer, I developed my legal research skills drafting memos for ACLU of North Carolina in pursuit of that goal. In my 2L year, I assisted the University of Chicago Law School's Employment Law Project on employment discrimination cases in state and federal courts. These experiences have solidified my dedication to public service. Finally, serving as the Editor-in-Chief of the *University of Chicago Law Review* has taught me how important it is to lead with humility, collegiality, and kindness, especially in high-stress environments. I believe I would make a strong addition to your chambers.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Aziz Z. Huq, Aneil Kovvali, and Randall D. Schmidt will arrive under separate cover. Paper grades for Winter Quarter and Spring Quarter 2023 have not been posted yet, and I will provide an updated transcript when grades are posted. Should you require additional information, please do not hesitate to let me know.

Respectfully,



Bethany Ao

Bethany Ao

5400 S. Harper Ave., Apt. 1101, Chicago, Illinois 60615 • (910) 398-1737 • bethanyao@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, Illinois, Candidate for J.D., June 2024

- JOURNAL: *The University of Chicago Law Review*, Editor-in-Chief, 2023-2024
- HONORS: Walter H. Moses Sr. and Walter H. Moses Jr. Scholarship, Chicago Bar Foundation, 2021-2024; Ruth Wyatt Rosensen Scholarship Fund, the University of Chicago Law School, 2022-2023
- ACTIVITIES: Asian Pacific American Law Student Association (Social Director, 2022-2023); Mental Health Advocacy Project (Vice President, 2022-2023); Labor and Employment Law Society (Events Coordinator 2022-2023)
- PUBLICATIONS: Comment: Achieving Appropriate Relief for Religious Freedom Violations in Prisons After *Tanzin*, 90 U. Chi. L. Rev. XXX (2023); Case Note: “Saldana v. Glenhaven Healthcare LLC—Should Wrongful Death Suits from COVID-19 Be Heard Exclusively in Federal Courts?,” *The University of Chicago Law Review Online*

Northwestern University, Evanston, Illinois, B.S., *magna cum laude*, in Journalism with a minor in Asian American Studies, June 2017

- HONORS: Rick Wamre Hyper-local Fellowship, 2015; CIEE International Academic Internship Merit Scholarship for Study Abroad, 2015; Asian American Journalists Association & Columbia Journalism School Student Scholarship, 2017
- ACTIVITIES: Northwestern China Care; *The Daily Northwestern*
- STUDY ABROAD: Charles University, Prague, Czech Republic, 2015; Journalism Residency program in Cape Town, South Africa, 2016

EXPERIENCE

Chicago Lawyers’ Committee for Civil Rights, Voting Rights and Civic Empowerment Intern, Chicago, Illinois, July – September 2023

Winston & Strawn, Summer Associate in Litigation, Chicago, Illinois, May – July 2023

Employment Law Project, Clinical Student, Chicago, Illinois, September 2022 – present

- Helped draft an amicus brief for an employment discrimination case in state court; worked on settlement assistance

ACLU of North Carolina, Legal Intern, Raleigh, North Carolina, May – August 2022

- Conducted legal research and drafted portions of complaints, demand letters, and memoranda on civil rights issues such as prisoners’ rights, abortion, and LGBTQ equality under state and federal law

The Philadelphia Inquirer, Reporter, Philadelphia, Pennsylvania, November 2017 – June 2021

- Reported on mental health, sexual health, and preventative health with a focus on issues that affected young people
- Worked as an arts and entertainment reporter for two years prior to shifting to the health team

COMMUNITY SERVICE

Philly Reading Coaches, Philadelphia, Pennsylvania, September 2018 – May 2021

- Read once a week with elementary-age Philadelphia School District students to improve reading comprehension

Asian American Journalists Association, Philadelphia, Pennsylvania, June 2017 – August 2021

- Served as an Advisory Board representative for the Philadelphia chapter, and then on the National Board of Directors from 2019 to 2021
- Helped with policy and personnel decision-making for 1500+ member nonprofit promoting Asian American representation at national and international media organizations



Name: Bethany Ran Ao
Student ID: 12335018

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Northwestern University
Evanston, Illinois
Bachelor of Science 2017

Beginning of Law School Record

		Autumn 2021		
Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law William Baude	3	3	182
LAWS 30211	Civil Procedure Diane Wood	4	4	171
LAWS 30611	Torts Saul Levmore	4	4	180
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	183

		Winter 2022		
Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law Jonathan Masur	4	4	179
LAWS 30411	Property Aziz Huq	4	4	176
LAWS 30511	Contracts Douglas Baird	4	4	177
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	183

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	178
LAWS 30713	Transactional Lawyering David A Weisbach	3	3	174
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	178
LAWS 43227	Race and Criminal Justice Policy Sonja Starr	3	3	177
LAWS 44201	Legislation and Statutory Interpretation Farah Peterson	3	3	177

Summer 2022

Honors/Awards
The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 41501	Conflict of Laws William Baude	3	3	178
LAWS 43200	Immigration Law Amber Hallett	3	3	178
LAWS 53445	Advanced Criminal Law: Evolving Doctrines in White Collar Litigation Thomas Kirsch	3	3	182
LAWS 90216	Employment Law Clinic Randall Schmidt	1	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	177
LAWS 40201	Constitutional Law II: Freedom of Speech Genevieve Lakier	3	3	177
LAWS 53484	Environmental and Energy Justice Mark Templeton	3	0	
LAWS 90216	Employment Law Clinic Randall Schmidt	1	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P



Name: Bethany Ran Ao
Student ID: 12335018

University of Chicago Law School

		Spring 2023			
Course	Description	Attempted	Earned	Grade	
LAWS 41601	Evidence John Rappaport	3	3	177	
LAWS 53282	The Interbellum Constitution: Union, Commerce, and Slavery in the Early 19th Century Alison LaCroix	3	0		
LAWS 53469	Advanced First Amendment Law Genevieve Lakier	3	0		
LAWS 90216	Employment Law Clinic Randall Schmidt	1	0		
LAWS 94110	The University of Chicago Law Review Meets Substantial Research Paper Requirement	1	1	P	
Req					
Designation:					
Anthony Casey					

End of University of Chicago Law School



Aneil Kovvali
Associate Professor of Law
Indiana University Maurer School of Law
Baier Hall
211 S. Indiana Avenue
Bloomington, IN 47405
akovvali@iu.edu | 609-902-8571

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to share my enthusiastic support for the clerkship application of Bethany Ao.

Bethany was in my first year legal research and writing class at the University of Chicago Law School. At the time I was a Bigelow Fellow, having completed several years in private practice at a law firm in New York. I currently serve as an Associate Professor of Law at the Indiana University Maurer School of Law.

Bethany was a consistently strong writer. Perhaps because of her background in journalism, she was producing excellent, clean, and efficient prose from the moment she arrived in my class. She readily applied those skills to the unique task of capturing legal reasoning in text. It was always a pleasure to read and comment on her work.

The class was structured around three major assignments: an objective memo based on a closed universe of materials, an objective memo based on legal research across all real world materials, and a persuasive brief. Bethany's work was particularly superlative on the objective memos. She had a knack for making sense of a complicated body of law and applying it to a complex set of facts in a way that was fair and sensible. I would have been happy to receive her work from a junior attorney when I was in private practice, and I would have felt confident relying on her analysis when making consequential decisions.

While I was not able to give her the highest marks on the persuasive brief, I would stress that this was largely a function of the arbitrary mandatory curve for the class. Taking her work as a whole over the course of the full year, I would have no hesitation describing her as one of the best students I taught at Chicago. More importantly, Bethany did not rest on her laurels at the beginning of the class; she worked diligently to improve. I am confident that she has grown even more as a legal writer and thinker since her time in my class.

Apart from her written output, Bethany stood out for her warmth and generosity to her classmates. In my class, I would frequently break the class into groups so that students could give each other feedback on their work. I would then listen in on the various groups. Whenever I listened to Bethany's group, I would always overhear her making useful and thoughtful comments that would improve the quality of her classmates' work. If you are lucky enough to have Bethany in your chambers, she will not only give you excellent work—she will help improve the work of her fellow clerks.

Bethany also stood out for her passion for public service, and her desire to use the law to make the world a better place. Her passion was particularly impressive because it was both real and disciplined. Many students drift into law school based on a vague sense that it is an interesting field or that it is a natural way to continue studying. But Bethany had a well-formed view of law's role in fostering justice.

Importantly, her goals were also tempered by a recognition of the limitations of law and of the need to follow relevant precedents and rules. This also came through in her written work—her objective memos did not simply capture what she *wanted* the law to be; they were a fair-minded account of what the cases and other legal materials said. From my conversations with Bethany, I have the strong sense that this is how her mind really works—she not only respects doctrinal structures, but enjoys analyzing them and working within them. As a result, I have no doubt that you will be able to rely fully on her work, and that you will be proud of the good that she will do over the course of her legal career.

If there is any way that I can be helpful in your consideration of Bethany's application, please do not hesitate to contact me.

Sincerely,
Aneil Kovvali

Aneil Kovvali - akovvali@iu.edu - 773-702-9494

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law
University of Chicago Law School
1111 East 60th Street | Chicago, Illinois 60637
phone 773-702-9566 | fax 773-702-0730
email huq@uchicago.edu
www.law.uchicago.edu

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Bethany Ao (University of Chicago Class of 2024), to the position of law clerk in your chambers. I taught Bethany in two different 1L classes—Property and Constitutional Law: Equal Protection and Due Process. In both of these quite different classes, she performed either well or else very well. More generally, Bethany has a very strong record in classes over the last year and a half. Even more impressively, she performed well enough in her first year on the University of Chicago Law Review, that she has been selected to be its Editor in Chief. Having worked with students in this role before, I know that it is a personally and professionally demanding one. From direct experience with her working on the Law Review's 2024 Symposium, and from indirect reports, I understand that Bethany is doing a terrific job already. Based on her very strong academic record, and on her leadership at the law school, as well as her very strong professional background as a reporter with a large daily paper, the Philadelphia Inquirer, I heartily recommend Bethany as a clerk to your chambers.

I have taught Bethany in two classes, and so will address those and her academic record more generally as a threshold matter. The two classes in which I taught Bethany were Property (which is a 1L class) and Constitutional Law: Equal Protection and Due Process (which in this case was a 1L elective class). They are very different classes. The first is a largely common-law class, although I teach it with a hefty dose of economics and of political theory (e.g., Locke, Nozick, and Demsetz). The second involves a great deal of constitutional and political history; it focuses on the way in which different moments in history have shaped the selection of controversies and the nature of the rules that emerge. The two classes, that is, are very different: They require somewhat different skill sets to excel. In Constitutional Law, Bethany secured a very high "B," and in the Property Class she obtained a median B. The second is a respectable grade, and the first is a very strong one. In both cases Bethany's exams, moreover, were very well written. They were clear and effective in the use of legal arguments where others were obscure. I think Bethany's experience as a journalist helped in the Constitutional Law class, allowing her to better marshal various sorts of evidence and arguments.

These grades, moreover, are not evidence of Bethany at her academic best: Indeed, her transcript as a whole suggests that she is a good deal stronger academically than her performance in my classes would suggest. She has achieved as good or better a grade in almost all her other courses. For instance, she has exceptionally strong grades (toward the top of her class) in Legal Research and Writing, in Elements of the Law (a 1L introductory course), and in Advanced Criminal Law. My sense is that all of these courses involve some writing, rather than the merely artificial exercise of exam-taking—and that her pattern of grades reflect this comparative advantage on Bethany's part. I think the unevenness of the record, therefore, is evidence of relative skill in different forms of assessment, and not evidence of an intellectual shortfall.

These grades, moreover, should be understood in the general context of Chicago assessment modalities. Unlike many other law schools, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is not large movement from this median. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is simply not possible with a grading system of the kind used by some of our peer schools, which are seemingly designed to render ambiguous and inscrutable differences between the second tier of students and the third- and fourth-tiers. In Chicago's reticulated grading system, there is no doubt that Bethany's scores should be seen as very good ones.

At the end of her first year, Bethany was selected for the Law Review. This year, she was then selected as the Editor-in-Chief of the University of Chicago Law Review. The review is also publishing her comment later this year, as well as a short analytic piece in its online supplement. The role of Editor-in-Chief, of course, is a very demanding one. It entails not just a great deal of substantive engagement on the scholarship being published, but a large amount of managerial work dealing with staff and also negotiating with the law school. I understand Bethany to be excelling in both dimensions. I have had several conversations with Bethany about the Review's relationship with the law school, and its finances. I am very aware that she is on top of the manifold tasks of running the Review, and is well respected by her peers for doing this. (One small piece of evidence: During a recent conference the Review ran, Bethany was the one staffing the check in desk. It's evidence of her leadership style that she took on a task of that kind, which she easily could have delegated). Bethany has also been active in respect to how the law school handles mental health issues (which has been a concern of hers since she reported on such issues during the pandemic), as well as being a leader of the Asian Pacific American Law Students Association. It is very impressive that she has been able to keep up all these activities while maintaining high grades.

Aziz Huq - huq@uchicago.edu - 773-702-9566

In addition, Bethany would bring an impressive set of professional experience to the table. After she graduated from Northwestern University with a journalism degree, she secured a prized position with the Philadelphia Inquirer. There, she reported through the COVID pandemic – at a time when journalism was both incredibly important and really difficult to do. She first entered journalism—and succeeded in securing a position when many others fail—despite strong opposition from her family. Her parents hail from China, and were very concerned about a career without a very secure financial future—and she had to overcome their opposition. Bethany, moreover, was a Mandarin speaker for her first decade of life, having been largely home-schooled until the fourth grade. She then experienced a good deal of bullying and ethnic slurs while growing up in Wilmington, NC (which is not a terribly cosmopolitan town). She has more than overcome these impediments to become a terrific communicator and writer. In particular, my sense is that Bethany’s career as a journalist has plainly paid off in respect to her writing and also her ability to work well with others. In respect to the latter, she plainly draws on a deep well of empathy and her listening skills to lead, rather than forcing her way.

Building on the experience she obtained pre-law school, Bethany is spending this summer working at Winston and Stawn, on employment law questions, and also the Chicago Lawyer’s Committee for Civil Rights. Last summer, she worked in her native North Carolina for the local ACLU.

Based on all this evidence, I have every expectation that Bethany will be a terrific clerk. Thus, I am an enthusiastic and unqualified supporter of her application, and very much hope you consider it seriously. I would be happy to answer any questions you have about Bethany’s candidacy, and can be reached at your disposal at huq@uchicago.edu and 703 702 9566.

Sincerely,

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law

Bethany Ao

5400 S. Harper Ave., Apt. 1101, Chicago, Illinois 60615 • (910) 398-1737 • bethanyao@uchicago.edu

Writing Sample

The attached writing sample is a memorandum that I drafted as an assignment when I was an intern at the North Carolina chapter of the American Civil Liberties Union (ACLU-NC). The assignment was to research whether the lack of air-conditioning in prisons constituted an Eighth Amendment violation and assess what factors ACLU-NC should consider for a potential civil action. I performed all of the research and have only included the portions of the memorandum that I personally wrote. I am submitting this writing sample with the permission of ACLU-NC.

Introduction

The North Carolina chapter of the American Civil Liberties Union (ACLU-NC) is considering whether to bring an Eighth Amendment challenge to the issue of delayed installation of air-conditioning in North Carolina state prisons.

This memorandum analyzes litigation in other circuits that should inform ACLU-NC's approach to bringing a challenge. It describes and discusses cases that resulted in heat mitigation measures for state prisoners and cases that did not. To summarize, all cases that have resulted in relief involved plaintiffs who had preexisting health conditions and heat index temperatures that exceeded 90 °F regularly. Notably, no federal court has ordered the installation of air-conditioning as part of an injunction.

To increase the likelihood of a successful challenge, ACLU-NC should seek out plaintiffs with preexisting health conditions, confirm that temperatures in North Carolina state prisons exceed 90 °F regularly, and request other types of relief, such as ice machines, in addition to prompt installation of air-conditioning.

Background

The North Carolina General Assembly approved \$30 million to address a serious lack of air conditioning in the state's prison system in fall 2021. According to local news reports and state data, approximately 40% of the total number of state prison beds are in rooms without air-conditioning.

Construction has not yet begun. The state has said that installation efforts have been delayed by heightened demand for HVAC supplies and shortages of construction crews due to the COVID-19 pandemic. Officials in Governor Roy Cooper's administration said that they hope to complete the first three projects around the beginning of 2023.

Eighth Amendment framework and excessive heat

The Supreme Court has not addressed excessive heat in prisons directly. But the Court has said that conditions of confinement in prisons may violate the Eighth Amendment when they produce “the deprivation of a single, identifiable human need such as food, warmth, or exercise—for example, a low cell temperature at night combined with a failure to issue blankets.” *Wilson v. Seiter*, 501 U.S. 294, 304 (1991).

Using this guidance, federal courts have applied Eighth Amendment doctrine in excessive heat cases. Eighth Amendment doctrine requires that prison conditions pose “‘an unreasonable risk of serious damage’ to a prisoner’s health—an objective test.” The doctrine also requires that “prison officials . . . acted with deliberate indifference to the risk posed—a subjective test” “to be tantamount to the infliction of cruel and unusual punishment.” *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (quoting *Helling v. McKinney*, 509 U.S. 25, 33–35 (1993) (holding exposure to an “unreasonable risk of damage to [a prisoner’s] health” actionable under the Eighth Amendment)). “Subjective recklessness as used in the criminal law is . . . the test for deliberate indifference under the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 839–40 (1994) (internal quotation marks omitted). Furthermore, plaintiffs do not have to show that death or serious injury has already occurred to establish an Eighth Amendment violation, only that there is a “substantial risk of serious harm.” *Ball*, 792 F.3d at 593 (internal quotation marks omitted).

Most of the litigation over excessive heat in prisons has occurred in the Fifth Circuit. The Fifth Circuit has repeatedly recognized the “serious risk of harm that excessive heat can pose in the prison context absent adequate mitigating measures.” *Yates v. Collier*, 868 F.3d 354, 361 (5th Cir. 2017). *See also Valigura v. Mendoza*, 265 F. App’x. 232, 235 (5th Cir. 2008) (“We have held that temperatures consistently in the nineties without remedial measures, such as fans, ice water, and showers, sufficiently increase the probability of death and serious illness so as to violate the Eighth

Amendment.”). Though the Fifth Circuit has found Eighth Amendment violations in multiple prisons with excessive heat problems, the court has not yet ordered installation of air-conditioning through an injunction.

Objective risk of substantial harm to prisoners with preexisting health conditions

The Fifth Circuit first found that excessive heat violated the Eighth Amendment in *Gates v. Cook*, 376 F.3d 323, 327 (5th Cir. 2004). A group of death row prisoners at the Mississippi Department of Corrections sued, alleging that they were knowingly and deliberately subjected to poor living conditions, including high temperatures. *Id.* Summer temperatures in the Mississippi Delta average in the nineties with high humidity. Though the prison provided prisoners with industrial fans in the hallways and personal fans in their cells, the court found that this ventilation system failed to provide prisoners with “a minimal level of comfort during the summer months.” *Id.* at 334.

The Fifth Circuit also paid special attention to the effects of excessive heat on prisoners with preexisting health issues in *Gates*. During the trial, the plaintiffs provided expert testimony detailing the significant likelihood that a death row prisoner would die from heatstroke or a heat-related illness if conditions remained the same. *Gates*, 376 F.3d at 339. In response, the court said that the “probability of heat-related illness . . . is dramatically more so for mentally ill inmates who often do not take appropriate behavioral steps to deal with the heat,” and that medications that prisoners take for their medical issues often interfere with the body’s ability to maintain a normal temperature. *Id.* at 334. As a remedy, the Fifth Circuit ordered officials to measure the prison’s interior heat index four times a day in the summer. *Id.* at 336. If the heat index exceeded 90 °F, prison officials must equip each cell with a fan and make ice water and daily showers available to every prisoner. *Id.*

In 2015, the Fifth Circuit went one step further and held that while the lack of air-conditioning in prisons did not constitute an Eighth Amendment violation, excessive heat that exacerbated

prisoners' preexisting medical problems did. *Ball*, 792 F.3d at 596. The court then ruled that district courts can order relief to counter excessive heat. *Id.* at 598. *Ball v. LeBlanc* was brought by three death row prisoners who lived in the Louisiana State Penitentiary (LSP), where the housing tiers were not air-conditioned. *Id.* at 589–90. Instead, LSP provided prisoners with unlimited access to fans and water, as well as an oft-empty ice chest for one hour per day. *Id.* at 590. Despite these mitigation efforts, the plaintiffs claimed that the heat they endured in the summer months, which ranged from 81.5 °F to just under 108 °F, violated the Eighth Amendment because of their preexisting medical conditions. *Id.* The high temperatures caused the plaintiffs to experience dizziness, headaches, and cramps when combined with their medical conditions, which included hypertension, obesity, and diabetes. *Ball*, 792 F.3d at 590.

The Fifth Circuit affirmed the U.S. District Court for the Middle District of Louisiana's finding that the plaintiffs were at substantial risk of serious harm to their health. *Ball*, 792 F.3d at 593. The district court had based this finding on expert testimony that hypertension medication can inhibit the body's ability to regulate temperature by adversely affecting the cardiovascular system. *Id.* The plaintiffs' expert also testified that diabetes can result in cardiovascular disease, which hardens arteries and blood vessels, limiting the body's ability to regulate temperatures. *Id.* The Fifth Circuit said that the combination of expert testimony and heat index numbers fulfilled the objective test requirement of establishing an Eighth Amendment violation. *Id.* at 594.

Yates v. Collier, a successful Fifth Circuit class and subclass certification case over excessive temperatures in a Texas prison, also demonstrated how expert testimony can help plaintiffs meet the objective test portion of an Eighth Amendment violation. 868 F.3d 354, 364 (5th Cir. 2017). The plaintiffs, many of whom had preexisting health conditions, presented testimony from two experts. One of the experts was a lead scientist at the Centers for Disease Control and Prevention (CDC). *Id.* at

363. The experts said that peer-reviewed studies showed that taking extra showers or baths and using fan ventilation during a heat wave did not lower the risk of death in a statistically significant way. *Id.* at 364. They also testified that fans can be counterproductive at higher temperatures because they “increase heat stress by blowing air that is warmer than body temperature over the skin surface,” and that the CDC does not recommend the use of fans when the temperature is above 95 °F. *Id.*

These cases show that the Fifth Circuit did not consider the existence of remedies to be enough to avoid an Eighth Amendment violation—the remedies also had to be *effective* at relieving heat stress for prisoners with preexisting health conditions. In *Blackmon v. Garza*, the Fifth Circuit ruled that though the Texas Department of Criminal Justice (TDCJ) had taken remedial steps like providing prisoners with cool ice water and allowing extra showers, such measures were insufficient because “the windows were sealed,” the unit “did not have a water fountain,” and “inmates were not able to use personal fans.” 484 F. App’x. 866, 874, 871–72 (5th Cir. 2012). Indoor temperatures routinely exceeded 100 °F for days at a time, and the plaintiff suffered constant dizziness and headaches. *Id.* at 870–72. Therefore, the court concluded that the mitigation measures adopted by prison officials were not effective at addressing substantial health risks. *Id.* at 872.

On the other hand, courts are *less* likely to find that there is an unreasonable risk of serious harm when plaintiffs do not have preexisting health conditions that can be exacerbated by excessive heat. *See, e.g., Gober v. Collier*, No. 6:20–CV–259, 2021 WL 2008821 (E.D. Texas Apr. 14, 2021) (ruling that the plaintiff failed to establish an Eighth Amendment violation because he did not allege that he suffered from any condition that makes him particularly susceptible to heat).

In *Chandler v. Crosby*, the Eleventh Circuit held that high temperatures in cells occupied by death row prisoners at Union Correctional Institute (UCI) did not violate the Eighth Amendment. 379 F.3d 1278, 1282–83 (11th Cir. 2004). UCI’s summer ventilation system consisted of exhaust vents that

dispensed outside air into the cells without fans or air-conditioning. *Id.* at 1284. The idea was that exchanging indoor and outdoor air would cool the premises and keep the building between 80 and 86 °F. *Id.* at 1284–85.

In its decision, the Eleventh Circuit emphasized that “a prisoner’s mere discomfort, without more, does not offend the Eighth Amendment.” *Id.* at 1295. *See also Woods v. Edwards*, 51 F.3d 577, 581 (5th Cir. 1995) (“While the temperature in extended lockdown may be uncomfortable, that alone cannot support a finding that the plaintiff was subjected to cruel and unusual punishment in violation of the Eighth Amendment.”) The U.S. District Court for the Middle District of Florida had found that “the relative humidity in the building rarely [rose] above seventy percent, the humidity level needed to support the growth of mold and mildew” and “on average, inmates . . . may have experienced temperatures over ninety degrees nine percent of the time during the months of July and August 1998 and July of 1999.” *Chandler*, 379 F.3d at 1285–86. It is likely that because none of the plaintiffs, who were certified as a class, claimed that the heat exacerbated preexisting health conditions, the Eleventh Circuit saw the UCI temperatures, which were lower than the *Ball* temperatures, as discomfort-inducing instead of physically dangerous.

Deliberate indifference of prison officials to substantial risk of serious harm

The subjective part of establishing an Eighth Amendment violation requires prison officials to have a “sufficiently culpable state of mind.” *Ball*, 792 F.3d at 594 (quoting *Farmer*, 511 U.S. at 834). Finding deliberate indifference is a two-pronged inquiry; officials “must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists” and “draw the inference.” *Farmer*, 511 U.S. at 837. Courts analyze inferences made from circumstantial evidence, as well as the obviousness of a risk to determine whether officials had requisite knowledge. *Ball*, 792 F.3d at 594. For example, in *Ball*, the Fifth Circuit affirmed the district court’s finding that prison officials knew

that there was a substantial risk of serious harm because they monitored the temperature on death row, maintained a list of prisoners particularly susceptible to heat-related illness, and surreptitiously installed awnings and soaked exterior walls with water to decrease internal temperatures after the lawsuit was filed. *Ball*, 792 F.3d at 594–95.

Litigation over wrongful deaths from excessive heat in jails also provides an idea of what courts consider to be deliberate indifference. In *Brock v. Warren Cnty, Tenn.*, the plaintiffs sued county officials because their father died from heatstroke-related complications after being held in the Warren County Jail for six days. 713 F. Supp. 238, 239–40 (E.D. Tenn. 1989). The conditions in the jail were extreme—the plaintiff’s father, who had diabetes and was “borderline overweight,” lived in a cell that was almost fully enclosed during an intense heat wave. *Id.* at 240. While prisoners in the cell were allowed frequent showers, the heat caused the humidity in the cell to rise to the point that water was dripping off the walls. *Id.* The U.S. District Court for the Eastern District of Tennessee ruled that the officials in charge of the jail had violated the plaintiffs’ father’s Eighth Amendment rights, noting that “an inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met . . . such a failure may actually produce physical torture or a lingering death, the evils of most immediate concern to the drafters of the Amendment.” *Brock*, 713 F. Supp. at 242–43 (quoting *Estelle v. Gamble*, 429 U.S. 97, 103–05 (1976) (internal quotation marks omitted)).

PLRA limitations on remedies

The finding of an Eighth Amendment violation due to excessive heat does not mean that federal courts can order the immediate installation of air-conditioning. Though the Fifth Circuit found that there was an Eighth Amendment violation in *Ball*, the court ultimately ruled that LSP did not have to install air-conditioning because that would result in a violation of the Prison Litigation Reform Act (PLRA). *Ball*, 792 F.3d at 598. Under PLRA, a district court can only grant relief is “narrowly drawn,

extends no further than necessary to correct the violation of the [f]ederal right, and is the least intrusive means necessary to correct the violation,” and “give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.” 18 U.S.C. § 3626(a)(1)(A).

Limited by these restrictions, the injunction in *Ball* could only order LSP to (1) divert cool air from the guards’ pod into the tiers; (2) allow prisoners to access air-conditioned areas during their tier time; (3) allow access to cool showers at least once a day; (4) provide an ample supply of cold drinking water and ice at all times; (5) supply personal ice containers and individual fans; and (6) install additional ice machines. *Ball*, 792 F.3d at 599. Secondly, because this case was not brought as a class action, PLRA limited any relief to the plaintiffs before the court. *Id.* at 599–600. Lastly, the Fifth Circuit ruled that the district court could not mandate a maximum heat index because doing so would be inconsistent with precedent—*Gates* had upheld an injunction without one. *Id.* at 600 (noting that *Gates* required relief *when* temperatures exceeded 90 °F, not that temperatures must stay below 90 °F).

The Fifth Circuit revisited *Ball* in 2018 when it found that the district court had violated PLRA by ordering more injunctive relief when the plaintiffs said that what was being provided—cold water for 15-minute daily showers, ice containers that were regularly replenished with ice from new machines, and personal fans—did not alleviate their heat-related symptoms. *Ball v. LeBlanc*, 881 F.3d 346, 350 (5th Cir. 2018) (hereinafter, *Ball II*). In response to those complaints, the district court had ordered new relief measures that included (1) relocating the plaintiffs to another tier, closer to the guards’ air-conditioned pod; (2) installing an air vent in the guards’ pod to divert cool air to the plaintiffs; (3) setting up a plastic curtain around plaintiffs’ cells to capture the cool air; (4) providing each plaintiff with an “IcyBreeze” unit, an ice chest that blows cold air; and (5) regularly refilling the IcyBreeze units with ice. *Id.* at 350. These measures would go into place whenever the heat index

exceeded 88 °F, effectively creating a maximum heat index that violated PLRA after *Ball* “foreclosed relitigating whether the Constitution required setting [one].” *Ball II*, 881 F.3d at 350–52.

At the same time, the Fifth Circuit rejected the state’s argument that IcyBreeze units provided air-conditioning, which *Ball* expressly forbade. *Ball II*, 881 F.3d at 353. The court said that because IcyBreeze units do not emit water vapor, they are like evaporative coolers. *Id.* The coolers cost approximately \$500 each, which the court said “fit comfortably within *Ball I*’s admonition that any relief must not be unduly intrusive and must take into account ‘any adverse impact on public safety or the operation of a criminal justice system.’” *Id.* (quoting 18 U.S.C. § 3626(a)(1)(A)). Additionally, the Fifth Circuit said that the use of temperature triggers, like in *Gates*, was permissible because it prevented the injunction from being applied during months when there was no heat risk to the plaintiffs (unlike a maximum heat index). *Ball II*, 881 F.3d at 353.

Finally, the U.S. District Court for the Southern District of Texas discussed *Ball* and *Ball II* when it approved a class settlement that required the TDCJ to install air-conditioning for a subclass after a lengthy lawsuit. *Cole v. Collier*, No. 4:14–CV–1698, 2018 WL 2766028, at *1 (S.D. Tex. June 8, 2018). The subclass members, who were prisoners at the Wallace Pack Unit, alleged that the exposure to extreme, unsafe heat violated the Eighth Amendment, and that the mitigation measures put into place after *Ball* and *Ball II* had very limited effects. *Id.* Each subclass member suffered from preexisting health conditions that were exacerbated by excessive heat. *Cole v. Collier*, No. 4:14–CV–1698, 2017 WL 3049540, at *5–6 (S.D. Tex. July 19, 2017). At the time of litigation, the Pack Unit housed approximately 1,450 men—728 of whom had hypertension, 212 had diabetes, 142 had coronary artery disease, 111 had obesity, 53 had a psychiatric condition, 66 were prescribed an anti-psychotic medication, 22 had cirrhosis of the liver, 84 had chronic obstructive pulmonary disorder, 189

had thyroid dysfunction, and 113 had asthma. *Cole*, 2017 WL 3049540, at *4–5. Many of these conditions overlapped within one person. *Id.* at 5.

The district court said that the plaintiffs were likely to win on the merits when it granted a preliminary injunction ordering TDCJ to provide more effective respite for all prisoners. *Cole*, 2017 WL 3049540, at *10. TDCJ had implemented many of the mitigation measures discussed in *Ball* after twelve heat-related deaths in 2011 and 2012. But the court said that while those measures “ha[d] achieved various levels of effectiveness, they [did] not reduce the substantial risk of heat-related illness faced by all of the men at the Pack Unit, and particularly not the men with heat sensitivities.” *Id.* at *10.

Therefore, the injunction required TDCJ to lower temperatures where heat-sensitive subclass members were housed to no higher than 88 °F. *Cole*, 2017 WL 3049540, at *45. This contradicted the *Ball II* ruling that there cannot be a maximum heat index, but the district court likely accepted one here because existing heat mitigation measures were not working. The plaintiffs claimed that the respite areas were not large enough to accommodate everyone who wanted to use them and additional health checks during extremely hot days were not being conducted. *Id.* at 10. As a result, the district court held that the heat mitigation measures were insufficient to combat the substantial risk of heat-related illness for prisoners during the summer after an extensive analysis of comorbidities and side effects from prescription medications. *Id.*

The settlement agreement ultimately required TDCJ to keep the internal temperature at or below 88 °F between April 15 and October 15 every year. *Cole*, 2018 WL 2766028, at *2. Until permanent air-conditioning was installed, TDCJ had to use temporary air-conditioning to maintain that temperature. *Id.* The limit of 88 °F continues to apply to all heat-sensitive subclass members, even if they are transferred to different TDCJ units or facilities for medical or security reasons. *Id.*

To summarize, there have been no cases in which a federal court has directly ordered the installation of air-conditioning even after finding an Eighth Amendment violation because of PLRA limitations. However, courts have been willing to order heat mitigation measures such as increased showers, respite areas, ice machines, and IcyBreeze units to relieve plaintiffs when internal heat index numbers are higher than 90 °F. Courts have also demonstrated significant sensitivity to plaintiffs who have preexisting health conditions that can be exacerbated by heat. Finally, courts will enforce settlement agreements that include the installation of air-conditioning as a requirement.

Eighth Amendment excessive heat cases have succeeded when (1) plaintiffs suffered from preexisting health conditions that can be exacerbated by excessive temperatures; (2) internal temperatures exceeded 90 °F regularly; (3) plaintiffs presented evidence of prison officials' indifference; and (4) injunctive relief was narrowly tailored to abide by PLRA restrictions. Therefore, an action that involves expert testimony on precisely how plaintiffs' preexisting health conditions are exacerbated by excessive heat, includes evidence of internal temperatures that are consistently excessive, and requests specific relief tailored to PLRA restrictions is most likely to succeed.

Applicant Details

First Name	Tomas
Last Name	Arango
Citizenship Status	U. S. Citizen
Email Address	tomasarango7@gmail.com
Address	<div><div>Address</div><div>Street 4807 Spruce St. City Bellaire State/Territory Texas Zip 77401 Country United States</div></div>
Contact Phone Number	7134594616

Applicant Education

BA/BS From	Rice University
Date of BA/BS	May 2020
JD/LLB From	Harvard Law School https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 25, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard International Law Journal - Subciter Harvard Law and Policy Review - Junior Editor Harvard International Law Journal - Subciter Harvard Law and Policy Review - Junior Editor
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial Law
Clerk **No**

Specialized Work Experience**Recommenders**

Ardalan, Sabrineh
sardalan@law.harvard.edu
617-384-7504

Hanson, Jon
hanson@law.harvard.edu
617-496-5207

Neuman, Gerald
neuman@law.harvard.edu
617-495-9083

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tomás Arango

29 Banks Street, Apt 2, Somerville, MA 02144 | 713-459-4616 | tarango@jd24.law.harvard.edu

The Honorable Juan R. Sanchez
James A. Byrne United States Courthouse
601 Market St., Room 14613
Philadelphia, Pennsylvania, 19106
United States

June 12, 2023

Dear Judge Sanchez,

I am a second-year student at Harvard Law School writing to apply for a clerkship position in your chambers for the 2024-2025 term. As an aspiring public interest lawyer hoping to engage in strategic advocacy and litigation serving immigrant communities, your background in public service is of special interest to me. Enclosed are my resume, writing sample, and law school transcript. Letters of recommendation from the following Harvard faculty will be sent separately; they are open to inquiry in the meantime.

Prof. Sabrineh Ardalan
sardalan@law.harvard.edu
(617) 384-7504

Prof. Gerald Neuman
neuman@law.harvard.edu
(617) 495-9083

Prof. Jon Hanson
hanson@law.harvard.edu
(617) 496-5207

I have honed my legal research and writing skills through my work for the Harvard Refugee and Immigrant Clinical Program and Northwest Immigrant Rights Project, where I draft varied documents for litigation, including amicus briefs, complaints, reply briefs, and immigration filings. I have also worked for the ACLU's Immigrants' Rights Project, where I wrote research memoranda on complex emerging issues in administrative law, immigration law, and civil procedure.

If there is any additional information that would be helpful to you, I would be happy to provide it. Thank you very much for your time and consideration.

Sincerely,



Tomás Arango

Tomás Arango

29 Banks Street, Apt. 2, Somerville, MA 02144 | 713-459-4616 | tarango@jd24.law.harvard.edu

EDUCATION

HARVARD LAW SCHOOL, Cambridge, MA

J.D. Candidate, May 2024

Activities: Prof. Jon Hanson, Research Assistant
Harvard Law and Policy Review, Editor
Harvard International Law Journal, Subciter

UNIVERSITY OF SUSSEX, Brighton, UK

M.A. in Migration Studies, September 2021 | Fulbright Scholarship

Honors: Graduate with Distinction

Dissertation: *The Discursive Construction of LGB Asylum Seekers in US Circuit Court Decisions*

RICE UNIVERSITY, Houston, TX

B.A. in Economics and Public Policy, May 2020

Honors: Trustee Distinguished Scholarship
 Abraham Broad Exchange Scholarship (Trinity College, Cambridge)

EXPERIENCE

NORTHWEST IMMIGRANT RIGHTS PROJECT, *Impact Litigation Intern*, Seattle, WA Summer 2023

Researching and writing portions of complaints and briefing for ongoing litigation. Cases include family separation and fourth amendment violation damages actions, an agency delay mandamus action, and detention center conditions litigation. Researching and drafting six asylum cover letters for an Afghan family.

HARVARD IMMIGRATION AND REFUGEE CLINIC, *Student Participant*, Cambridge, MA Winter, 2023 – present

Researching and drafting briefing and motions for ongoing district court litigation about immigration detention conditions, medical abuse, and visa revocation. Monitoring and evaluating First Circuit petitions for review for prospective intervention.

ACLU, IMMIGRANTS' RIGHTS PROJECT, *Legal Intern*, New York, NY Summer, Fall 2022

Researched and wrote memoranda on administrative law questions for ongoing and prospective litigation on federal immigration policy. Work centered on *Accardi* claims, 8 U.S.C. 1252(f)(1) and the implications of *Garland v. Aleman Gonzalez*, state civil rights statutes, and civil procedure.

HARVARD IMMIGRATION PROJECT, *Policy Team Member*, Cambridge, MA Fall 2021 – present

Interpreting client meetings for the Harvard Immigration and Refugee Clinic. Prepared and translated know-your-rights materials on the National Qualified Representative Program (NQRP) for sessions with direct services organizations.

TAHIRIH JUSTICE CENTER, *Interpreter & Translator*, Houston, TX Spring 2018 – Fall 2021

Interpreted asylum interviews and proceedings, client-attorney interactions, and support groups. Translated documents for use in asylum cases and other immigration procedures.

RICE UNIVERSITY, *Research Assistant, Professor Kerry Ward*, Houston, TX Spring – Fall 2020

Researched the development of anti-trafficking networks and organizations in Texas and shifts in organizational mandates, funding, and media discourse surrounding the passage of the Trafficking Victims Protection Act.

MADRE, *Human Rights Advocacy Program Intern*, New York, NY Summer 2018

Compiled crimes against humanity cases against 1,804 former ISIS officials in Iraq with evidence from 4,383 victims. Assisted in drafting successful campaign on gender language in the upcoming Crimes Against Humanity Treaty.

PERSONAL

Native Spanish speaker. Interested in long-distance biking around Boston, book collecting (constrained writing and the Oulipo group), playing piano, and editing Wikipedia.

Harvard Law School

Date of Issue: June 6, 2023

Not valid unless signed and sealed

Page 1 / 2

Record of: Tomas Arango

Current Program Status: JD Candidate

Pro Bono Requirement Complete

JD Program				2844	Communication, Law and Social Justice	P	4	
Fall 2021 Term: September 01 - December 03				2423	Jenkins, Alan			
1000	Civil Procedure 6	P	4		Human Rights and International Law	H	3	
	Rubenstein, William				Neuman, Gerald			
Fall 2021 Total Credits:						Fall 2022 Total Credits:	12	
1001	Contracts 6	P	4	Winter 2023 Term: January 01 - January 31				
	Bar-Gill, Oren							
1002	Criminal Law 6	H	4	2249	Trial Advocacy Workshop	CR	3	
	Rabb, Intisar				Sullivan, Ronald			
Winter 2023 Total Credits:							3	
1006	First Year Legal Research and Writing 6A	P	2	Spring 2023 Term: February 01 - May 31				
	Francus, Michael							
1005	Torts 6	H*	4	2651	Civil Rights Litigation	P	3	
	Hanson, Jon				Michelman, Scott			
	* Dean's Scholar Prize			8020	Harvard Immigration and Refugee Clinic	H	4	
Fall 2021 Total Credits:				18	Ardalan, Sabrineh			
Winter 2022 Term: January 04 - January 21				2115	Immigration and Refugee Advocacy	H	2	
1051	Negotiation Workshop	CR	3	2466	Ardalan, Sabrineh			
	Todd, Gillien				Immigration Law	H*	3	
Winter 2022 Total Credits:				3	Neuman, Gerald			
Spring 2022 Term: February 01 - May 13					* Dean's Scholar Prize			
1024	Constitutional Law 6	H	4	3018	Strategic Litigation and Immigration Advocacy	H	2	
	Stephanopoulos, Nicholas				Ardalan, Sabrineh			
Spring 2023 Total Credits:							14	
2084	Family Law	P	3	Total 2022-2023 Credits:			29	
	Halley, Janet			Fall 2023 Term: August 30 - December 15				
1006	First Year Legal Research and Writing 6A	P	2	2597	Crimmigration: The Intersection of Criminal Law and Immigration Law	~	2	
	Francus, Michael				Torrey, Philip			
1003	Legislation and Regulation 6	P	4	3236	Deliberation	~	3	
	Renan, Daphna				Nesson, Charles			
1004	Property 6	P	4	2086	Federal Courts and the Federal System	~	5	
	Fisher, William				Goldsmith, Jack			
Spring 2022 Total Credits:				17	2169	Legal Profession: Public Interest Lawyering	~	3
Total 2021-2022 Credits:				38		Wacks, Jamie		
Fall 2022 Term: September 01 - December 31				2319	Theories About Law	~	2	
2000	Administrative Law	P	4		Sargentich, Lewis			
	Freeman, Jody			Fall 2023 Total Credits:			15	
2264	Citizenship	CR	1					
	Neuman, Gerald							

continued on next page

continued on next page

Harvard Law School

Record of: Tomas Arango

Date of Issue: June 6, 2023

Not valid unless signed and sealed

Page 2 / 2

Spring 2024 Term: January 22 - May 10			
2048	Corporations	~	4
	Hanson, Jon		
		Spring 2024 Total Credits:	4
		Total 2023-2024 Credits:	19
		Total JD Program Credits:	86
End of official record			

HARVARD LAW SCHOOL
 Office of the Registrar
 1585 Massachusetts Avenue
 Cambridge, Massachusetts 02138
 (617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a Clinical Professor of Law at Harvard Law School and Director of the Harvard Immigration and Refugee Clinical Program (HIRCP). I had the pleasure of becoming acquainted with Tomas Arango through his participation in the Strategic Immigration Litigation course and the Immigration and Refugee Advocacy Seminar and Clinic in the spring of 2023, as well as through his work with me as a research assistant and his participation in the HLS Immigration Project (HIP), a student practice organization during his 1L year. In these capacities, I have been able to assess Tomas's legal research, analytical, and writing skills, all of which are top-notch. He is very bright and a pleasure to work with. For these reasons, I believe he would be an outstanding judicial law clerk.

Tomas excelled in both classes I taught, receiving Hs for his thoughtful contributions in class, his clear and persuasive final papers, as well as his insightful reflection papers and blog posts. As a HIRC clinical student, Tomas demonstrated himself to be a stellar advocate. He tackled multiple cases involving a diverse array of legal issues, from a successful amicus brief filed with the Fourth Circuit in support of a gender asylum case, to a brief in opposition to a motion to dismiss immigration class action litigation filed in district court, from monitoring Petitions for Review at the First Circuit to drafting an innovative motion to amend in district court related to protections under the Violence Against Women Act and researching toxic land issues as they related to a potential challenge to the ongoing use of an immigration detention facility. With all of these cases, he had to contend with learning complicated new areas of law, while at the same time balancing competing goals and demands on his time given his wide range of clinical projects, and he did so flawlessly.

Tomas sets himself aside from his peers with his excellent research and writing skills. He takes particular care to make sure that every written work product—from legal memos to briefs—is written in a clear and compelling manner. Tomas is highly self-motivated, even when presented with challenging and unfamiliar areas of the law.

Tomas excels at working both independently and in a team. He collaborated exceptionally well with the student he was paired with in reviewing petitions for review filed with the First Circuit and the underlying Board of Immigration Appeals decisions, ensuring that the work product they produced together reflected their best collective effort. Without their seamless team work, it would not have been possible to successfully launch and bring to completion the Petition for Review monitoring project, aimed at expanding access to counsel for pro se litigants in the circuit court and providing amicus support in cutting-edge cases.

In addition Tomas is adept at working independently, which he did on both the Fourth Circuit amicus brief and the motion to amend in the District Court, with little supervision or guidance—effectively completing research assignments and drafting projects that required little editing or follow up after the fact.

Prior to his 2L year, I became acquainted with Tomas because of his deep commitment to immigration issues and his excellent work with both HIRCP and HIP. He interpreted for clients in HIRCP and volunteered as a policy member of HIP, through which he prepared and translated know-your-rights presentations for community organizations on access to counsel for immigrants suffering from mental illness. Often non-graded activities are the first to be cut from students' plates when the rigors of the first-year curriculum kick-in, but Tomas excelled at juggling both his coursework and volunteer work with HIP. Tomas also came to meet with me his 1L year about his research interests and his Master's in Migration Studies, and I was so impressed with his thoughtful analysis that I offered him a research assistant position. Tomas excelled as a research assistant for me, helping me to bring several long-outstanding projects on EU border externalization and the development of new asylum systems in North Africa closer to completion. He came to all of our meetings prepared and offered smart and cogent reflections on existing research and drafts, conducted a thorough literature review and flagged possible areas for further developing the research projects.

At every turn, Tomas has time and again shown his deep support for human rights and immigration advocacy. During college, he volunteered extensively with Tahirih Justice Center, interpreting for asylum interviews and proceedings and translating documents. He also previously worked at MADRE, where he focused on advocacy related to international crimes against humanity in Iraq. His advocacy at Rice University on behalf of the Undocumented Students Working Group led to a successful change in university policies related to housing and police inquiries for undocumented students. More recently, his internship with the ACLU during his 1L summer and fall of 2L year afforded him the opportunity to engage in cutting edge research related to prospective litigation on behalf of immigrants. Tomas's family history drives his commitment to these critical issues.

In sum, I am impressed by Tomas both as a person and as a future attorney. Tomas's careful attention to detail, sharp intellect, and strong legal analysis and writing skills, as well as communication and listening skills will serve him well in a judicial clerkship. I am certain that Tomas would be an outstanding addition to your chambers, and it is without reservation that I recommend him to you.

I hope this letter is helpful to you. Please do not hesitate to contact me if I can provide additional information. I can be reached at sardalan@law.harvard.edu or 617-384-7504.

Sabrineh Ardalan - sardalan@law.harvard.edu - 617-384-7504

Sincerely,
Sabi Ardalan
Director, Harvard Immigration and Refugee Clinical Program
Clinical Professor of Law, Harvard Law School

Sabrineh Ardalan - sardalan@law.harvard.edu - 617-384-7504

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write on behalf of Tomás Arango, who has applied to you for a clerkship position. Tomás is smart, insightful, great to work with, and public-interested. I am happy to recommend him very highly.

I first met Tomás in the fall of 2021, when he was one of the very brightest lights in my Torts class. In several ways, Tomás stood out. He was well prepared, engaged, and enthusiastic about the course. His comments were insightful, on point, and constructive, and his work for the course was spectacular, including his exam, which was the best in the class, and one of the best exams that I have read in several years. He received a Dean's Scholar Prize for the course.

In addition, during the semester, I met with Tomás numerous times during my office hours, when I had the opportunity to get to know him better and to learn about his remarkable background and aspirations for the future. In those conversations, he often asked for additional readings that I might recommend – and later we would discuss the books he'd read based on my recommendations. In those conversations, I was struck by Tomás's preternatural wisdom and depth; I felt at times that I was in conversation with a thoughtful colleague, not a first-year law student. More important, I was impressed by how Tomás's prodigious appetite for learning had less to do with academic mastery and more to do with the value of ideas based on their relevance for helping to build a more just world.

Based upon those experiences, I invited Tomás to serve on a team of research assistants during the spring of his 1L year. Tomás immediately proved to be a first-rate research assistant. My co-author and I assigned draft sections of a large work in progress to the different research assistants, asking them to offer substantive and stylistic feedback, to find and fill in factual support for (or against) our arguments, and to complete citation details. Tomás was one of the few students to whom we gave the largest and most difficult assignments, reflecting the fact that he is a quick learner and an independent problem solver and that his work was exceptional — painstaking, reliable, and thorough. Last summer, I enlisted Tomás's as one of two research assistants to help on another project, and, again, his contributions were exemplary and invaluable.

Tomás is one of the more impressive, smart, talented, thoughtful, and likable students who I have had the pleasure of teaching and working with. His commitment to public interest work—more specifically, to pursuing a litigation career working with and for immigrant communities—is especially commendable, in my view. He is the sort of student whose career I look forward to watching, not only because of his skills as a lawyer, but also because of his earnest commitment to doing his part to advance justice and to make the world a better place. He personifies the sort of student who I am most grateful to have the privilege of teaching and mentoring.

Based on those experiences, I am delighted to recommend Tomás highly and am confident that he would be a first-rate law clerk in almost any chambers. I hope you will give his application your most serious consideration.

Sincerely,

Jon D. Hanson
Alan A. Stone Professor of Law

Jon Hanson - hanson@law.harvard.edu - 617-496-5207

June 07, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in support of Tomás Arango, a student at Harvard Law School, who is applying to you for a clerkship. I recommend him to you strongly.

I have gotten to know Tomás unusually well over the past year – he was a student in three of my courses, and performed superbly in all of them. Aside from these formal exchanges, we had several long conversations in my office hours.

In the fall of 2022, Tomás took “Human Rights and International Law” and the reading group on Citizenship. The basic subject of the former is human rights, but it also covers relevant parts of U.S. constitutional law and the relationship between the United States and the international legal regimes. Tomás was an active (not overactive) participant in the class, always well-prepared, analytically skilled, and insightful in the questions he asked as well as in the answers he gave. His written exam was splendid, very near the top of the class. The exam included both a standard law school hypothetical case and a more open-ended essay, and his answers to each were well-written, well-organized, and strongly argued.

The reading group was an ungraded seminar with discussion of various dimensions of citizenship from a series of perspectives – historical, philosophical, sociological, legal, and policy-based. Given the small size of the group and the emphasis on student engagement, nearly all the students spoke in every session. Tomás was, in qualitative terms, the leading contributor to the discussions, as a result of his close reading and careful analysis of the varied materials, and his ability to relate them to his own life experiences – he has traveled a lot for one so young. After these two courses, by the end of the fall semester I had formed quite a strongly positive impression of him.

In the spring semester, he took my course in Immigration Law. This is a U.S. domestic law course, with large doses of constitutional law and also administrative law and statutory interpretation, in a notoriously difficult and disputed policy context. Tomás shined even more in that classroom, and also wrote the best exam, earning the equivalent of an A+. His performance had all the same virtues as in the previous courses, this time within a dense statutory regime that generates numerous complex interactions across the semester. He acquired remarkable mastery of the legal framework that we were studying, and skill in applying it to particular factual situations, actual or hypothetical. His interventions in class also exhibited his strong concern for justice and for the role of the U.S. judiciary in preventing abuse of government power – an issue that he is keenly aware of in light of his own family’s experiences in other countries.

In terms of the personal characteristics that make a clerkship successful, Tomás would be a splendid clerk. In addition to all his legal skills, he has a lively intellect, is amiable in conversation, highly dedicated, and cheerful about hard work for the ends of justice. I have great confidence in him, and no reservations of any kind.

In short, I recommend Tomás Arango to you strongly.

Sincerely yours,

Gerald L. Neuman
J. Sinclair Armstrong Professor of International, Foreign and Comparative Law

Gerald Neuman - neuman@law.harvard.edu - 617-495-9083

Tomás Arango

29 Banks Street, Apt 2, Somerville, MA, 02144 | 713-459-4616 | tarango@jd24.law.harvard.edu

Writing Sample

Drafted Fall 2022

This writing sample was produced as part of my work for the ACLU's Immigrants' Rights Project as general research into the state of the law following the Supreme Court's decision in *Garland v. Aleman Gonzalez*, 142 S.Ct. 2057 (2022). To maintain confidentiality, and to obtain permission to use it for this purpose, I have modified it to remove references to specific prospective litigation. It is otherwise unedited by anyone else.

TO: My Khanh Ngo, Staff Attorney
FROM: Tomás Arango, Legal Intern
RE: Enforcing declaratory judgement after *Aleman Gonzalez*
DATE: December 2, 2022

QUESTIONS PRESENTED

What enforcement mechanisms exist for class action declaratory judgements? Are there any limits on these mechanisms for enforcement? Are there alternative mechanisms to class declaratory judgments we should consider?

BRIEF ANSWER

Motions under 29 U.S.C. § 2202 allow for further relief, including injunctions, when necessary and proper to enforce a declaratory judgment, and so are a promising vehicle for any class-wide relief we believe is still available after *Aleman*. There appear to be no substantial limits on this relief in terms of enforcement pending appeal or timeliness, though the motion is always brought before the court that issued the judgment in question. The standard for obtaining § 2202 relief is the vague “necessary or proper” test from the statute; we may need to show that the government will not (or has not) complied with the underlying declaratory judgment before a court grants further relief.

There are few examples of individual follow-on actions to enforce class declaratory judgments; these are usually the result of issue class actions under Rule 23(c)(4). Examples found so far involve individual actions for damages, however, so while there is no principled reason injunctive relief could not be sought, this also seems unusual. The reason is likely that 23(c)(4) classes generally serve to define questions of liability where remedies are financial and highly individualized. The sole exception is the *Brito* litigation discussed, which contemplated individual habeas petitions; the district court’s judgment there was exactly what we would want for an issue class strategy, but the First Circuit reversed and seems hostile to this approach.

Actions for injunctive relief by groups of plaintiffs, but not petitioners, are also possible, and provide an avenue for preliminary relief. These groups are theoretically unlimited in size, though group injunctions will become increasingly obvious attempts to circumvent *Aleman* the larger they grow. These actions are inherently far costlier, more logistically challenging, and may be subject to higher evidentiary burdens than class-wide injunctions but there is no theoretical barrier to using them beyond the – admittedly very unfriendly – language in *Aleman* itself.

DISCUSSION

A. Background

Last term, the Supreme Court held in *Garland v. Aleman Gonzalez*, 142 S.Ct. 2057 (2022), that 8 U.S.C. § 1252(f)(1) bars injunctive class-wide injunctive relief. *Id.* at 2067. Given this limitation, we are exploring the enforceability of class-wide declaratory judgements. Theoretically, these may include both follow-on actions within the class vehicle as well as individual enforcement actions brought to vindicate the legal rights declared for the class. This presumes that class-wide declaratory judgments are still available post-*Aleman* despite caselaw suggesting they may not differ from

injunctions when against the government, *see e.g., Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (“[A] declaratory judgment is, . . . where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court.”); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as “the functional equivalent of a writ of mandamus”). Some circuit caselaw suggests optimism on this question is warranted specifically in the § 1252(f)(1) context. *Alli v. Decker*, 650 F.3d 1007, 1009 (3rd Cir. 2011) (rejecting a district court holding that the statute “deprived the court of subject matter jurisdiction to entertain an application for *declaratory* relief on behalf of the plaintiff class.”) (emphasis added); *Texas v. United States*, 40 F.4th 205, 219-20 (5th Cir. 2022) (emphasizing that § 1252(f)(1) is “nothing more or less than a limit on injunctive relief” in the vacatur context after *Aleman* was decided) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999)).

B. Enforcing Class Declaratory Judgments

a. 28 U.S.C. § 2202

i. Potential of § 2202 as an enforcement mechanism

28 U.S.C. § 2202, which is the second half of the Federal Declaratory Judgement Act, states that:

“Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such a judgment.” 28 U.S.C. § 2202.

The hearing requirement in this provision is read to mean that the further relief “need not have been demanded, or even proved, in the original action for declaratory relief. . . . [A]ny additional facts which might be necessary to support such relief can be proved on the hearing provided in the section. . . .” *Edward B. Marks Music Corp. v. Charles K. Harris Music Pub. Co.*, 255 F.2d 518 (2nd Cir. 1958) *cert denied* 358 U.S. 831 (citing *Security Ins. Co. of New Haven v. White*, 236 F.2d 215 (10th Cir. 1956)); *accord Insurance Servs. Of Beaufort, Inc. v. Aetna Cas. and Sur. Co.*, 966 F.2d 847 (4th Cir. 1992); *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2nd Cir. 1998); *Westport Ins. Corp. v. Bayer*, 284 F.3d 489 (3rd Cir. 2002). That is, the range of what we may move for under § 2202 is independent of whatever we may or may not have sought as a remedy in the case before that point.

A motion for further relief may yield damages or equitable relief. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 2771 (4th ed. 2022). “It is well-settled that the district court may grant monetary relief in declaratory judgment proceedings, even without a specific request.” *Illinois Physicians Union v. Miller*, 675 F.2d 151 (7th Cir. 1982) (citing *Freed v. Travelers*, 300 F.2d 395 (7th Cir. 1962)); *accord Texasteel Mfg. Co. v. Seaboard Sur. Co.*, 158 F.2d 90 (5th Cir. 1946); *Kornfeld v. Kornfeld*, 341 Fed.Appx. 394 (10th Cir. 2009). Attorney’s fees or costs may also be awarded, but only if permitted by a separate statute; the Declaratory Judgments Act is not an independent basis for such awards. *Schell v. OXY USA Inc.*, 814 F.3d 1107 (10th Cir. 2016) *cert denied* 137 S.Ct. 376 (2016) *cert denied* 137 S.Ct. 446 (2016); *Continental Cas. Co. v. Assicurazioni Generali, S.P.A.*, 903 F.Supp 990 (S.D.W. Va 1995) (collecting cases). Other forms of damages such as restitution are likely available. *See e.g., Allstate Indemnity Co. v. Dixon*, 932 F.3d 696 (8th Cir. 2019). However, because restitution, and other forms of monetary remedies like disgorgement (which is equitable) are of limited relevance to our cases they will not be discussed further here.

One circuit case, *Gant v. Grand Lodge of Texas*, 12 F.3d 998 (10th Cir. 1993), specifically contemplated further declaratory relief in the context of a court's equitable jurisdiction to construct wills. *Id.* at 1003. The most typical form of equitable remedy, however, is an injunction. Injunctions are further relief that can be predicated on a declaratory judgment. *Powell v. McCormack*, 395 U.S. 486, 499 (1969). Of course, while perhaps the most desirable form of relief, such an injunction will run up against the holding in *Aleman Gonzalez*, 142 S.Ct. 2057, that prompted this research in the first place if issued on a class-wide basis. A court could theoretically issue several injunctions corresponding to many individuals, though there are serious questions whether a court would do so at any scale given that it would veer perilously close to open disregard for the *Aleman* holding. This will be discussed below.

Grants of further relief are reviewed for abuse of discretion. *See Noatex Corp. v. King Const. of Houston, L.L.C.*, 732 F.3d 479, 488 (5th Cir. 2013); *Besler v. United States Dep't of Agric.*, 639 F.2d 453, 455 (8th Cir. 1981); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co.*, 414 F.3d 558, 569 (5th Cir. 2005). The facts necessary to support such relief can be proven in the hearing that §2202 provides for. *Edward B. Marks*, 255 F.2d 518 (2nd Cir. 1958).

ii. Limitations on § 2202 as an enforcement mechanism

One potential limitation is our ability to secure enforcement pending an appeal; this is not a concern here. *See* My Khanh Ngo's memo "Enforcement of Declaratory Judgments Pending Appeal"; *cf. Continental Casualty Corp. v. Indian Head Indus.*, 941 F.3d 828 (6th Cir. 2019) (holding district courts are not limited by the scope of a circuit court's remand from considering § 2202 motions).¹

No time bar appears to exist either. Federal Rule of Civil Procedure 59(e) states that "a motion to alter or amend a judgement must be filed no later than 28 days after the entry of the judgment." Fed.R.Civ.P. 59(e). The relief provided by § 2202, however, is "further relief," which is distinct from altering or amending a judgment. *Cont'l Casualty Corp.*, 941 F.3d at 833-34 (6th Cir. 2019); *Horn & Hardart Co. v. Nat'l R.R. Passenger Corp.*, 659 F. Supp. 1258 (D.D.C. 1987) *cert denied*, 488 U.S. 849 (1988). Courts have long allowed further relief far after the time bars that the Federal Rules establish for other motions.² *See Besler v. U.S. Dept. of Agriculture*, 639 F.2d 453, 455 (8th Cir. 1981) (granting further relief where 20 months elapsed before petitioners sought it); *Edward B. Marks Music Corp.*, 255 F.2d 518 (reversing denial of further relief sought 11 years after declaratory judgment); *see also* Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 2771 (4th ed. 2022) (§ 2202 "is broad enough to permit the court to grant additional relief long after the declaratory judgment has been entered, provided that the party seeking relief is not barred by laches."). Motions under § 2202 cannot circumvent statutory limits on the relief that the court can grant. *See e.g., Christ v. Beneficial Corp.*, 547 F.3d 1292, 1299 (11th Cir. 2008) (reversing injunction and award of damages as restitution

¹ The Sixth Circuit had previously remanded this case to the district court "for further consideration of the question of Continental's liabilities [arising out of certain claims]". *Continental Casualty Corp.*, 941 F.3d at 834. The district court held that this limited remand deprived it of authority to grant a § 2202 motion for damages but the Sixth Circuit held the opposite on appeal. *Id.*

² At the time of some of these older cases, Federal Rule of Civil Procedure 59(e) placed a 10-day, rather than 28-day limit on motions to alter or amend judgments. References in these cases to a 10-day timeliness requirement are references to Rule 59(e).

or disgorgement of fees because it circumvented the express remedies provided for by the Truth In Lending Act).

Though I have not found a rule statement as such, it does seem that at § 2202 motion is always brought before the court that issued the declaratory judgment in question. Related caselaw on jurisdiction pending and following appeal suggests that jurisdiction over the enforcement of a declaratory judgment remains with the original court. *See e.g. Burford Equip. Co. v. Centennial Ins. Co.*, 857 F. Supp. 1499, 1502 (M.D. Ala. 1994) (holding that § 2202 is an exception to the *Griggs* rule that an appeal divests the district court of jurisdiction); *GNB Battery Techs., Inc. v. Gould, Inc.*, 65 F.3d 615, 621 (7th Cir. 1995); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co.*, 414 F.3d 558, 572 (5th Cir. 2005).

Finally, although declaratory judgments do not require actual harm, motions for further relief are not exempt from this requirement. *See United States v. Fisher-Otis Co.*, 496 F.2d 1146, 1151 (10th Cir. 1974) (“The essential distinction between a declaratory judgment action and an action seeking other relief is that in the former no actual wrong need have been committed or loss have occurred in order to sustain the action.”); *Horne v. Firemen’s Retirement System of St. Louis*, 69 F.3d 233, 236 (8th Cir. 1995); *Kunkel v. Continental Cas. Co.*, 866 F.2d 1269 (10th Cir. 1989). The justification for further relief “can be proved on the hearing provided in this section or in an ancillary proceeding if that is necessary.” *Edward B. Marks*, 255 F.2d 518, 522 (2nd Cir. 1958). This standard is not quite the same as the standard for a preliminary injunction because the underlying question of law has already been decided. Instead, courts weigh hearings and briefing to decide whether the further relief meets the vague “necessary or proper” language from the statute. 28 U.S.C. § 2202; *see e.g., Public Citizen v. Carlin*, 2 F. Supp. 2d 18 (D.D.C. 1998) (finding jurisdiction because the declaratory judgment was disregarded and issuing an injunction was “necessary and proper”); *Duberry v. District of Columbia*, No. 14-1258 (RC), 2020 WL 13337792, *1 (D.D.C. Feb. 28, 2020) (denying § 2202 relief because it was “neither necessary nor proper” as “Plaintiffs [did not show] that anything more from this Court is necessary to make the District abide by the Court’s prior rulings”); *Kornfeld*, 341 Fed.Appx. at 396 (“Because relief need only be proper, it is irrelevant that there was no need for further relief. . .”)(citation omitted). This means that obtaining relief may require a showing that the government will not – or better yet – has not complied with the declaratory judgment, which might limit the speed with which we can succeed on such a motion (see discussion of declaratory judgments against federal officers in part A).

b. Individual enforcement actions

Research into individual follow-on actions to class declaratory judgments has been challenging, slow, and found limited success. One early avenue of research was the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. This research has not yielded examples of follow-on litigation; conversations during the research process have prompted a turn away from damages as a form of enforcement and so FDCPA cases will not be discussed further.

i. Issue Class Actions

Classes certified for certain issues under Federal Rule of Civil Procedure 23(c)(4) – henceforth issue classes – serve to allow litigation on specific issues to proceed on a class-wide basis even when the full requirements of Rule 23 cannot be satisfied with respect to an entire claim. *See Gilles, Myriam & Friedman, Gary, The Issue Class Revolution*, 101 B.U. L. Rev. 133, 136 (2021) (“In essence,

the issue class decouples the inquiry into the defendant's conduct from questions regarding the eligibility of individual claimants for relief.”). Issue classes for declaratory judgments are one promising form of litigation as they are often premised on the idea that individual follow-on cases are likely necessary for relief.

In *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417 (4th Cir. 2003), a district court certified an issue class with respect to certain claims in a case concerning a collapsed health insurance plan. *Id.* at 422. The Court wrote that class certification “provides a single proceeding in which to determine the merits of the plaintiffs’ claims, and therefore protects *the defendant* from inconsistent adjudications.” *Id.* at 427 (quoting 5 *Moore’s Federal Practice* § 23.02 (1999) (emphasis in original)). The “asymmetry of collateral estoppel” that refusing to certify the issue class would produce would ultimately be to the detriment of defendants, *id.*, and therefore any attempt by defendants to avert certification was likely “to keep Plaintiffs with relatively small claims out of court altogether – precisely the problem the class action mechanism was designed to address,” according to the court *Id.* n. 4. This, and similar reasoning in other circuits, supports the certification of issue classes to facilitate the resolution of large numbers of cases with common elements.

“An issues-class approach contemplates a bifurcated trial where the common issues are tried first, followed by individual trials on questions such as proximate causation and damages.” Manual for Complex Litigation (4th ed.) § 21.24. *See also Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1302-03 (7th Cir. 1995); *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 154 (2nd Cir. 2001); *see generally* Fed. R. Civ. Pro. 42(b). This means that a court enters a final judgment on the issue(s) that the class is certified for, and plaintiffs may then proceed with their individualized claims.

Issue classes that are certified for questions of liability or rights rather than relief (the pertinent category here) are generally brought and certified under 23(c)(4) because individualized damages determinations are needed; no such class – or putative class – I have encountered has contemplated follow-on actions for injunctive relief. *See e.g., Good v. Am. Water Works Co.*, 310 F.R.D. 274, 296-99 (S.D. W.Va. 2015) (regarding contamination of water source by coal processing chemicals); *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 672 F.3d 482 (7th Cir. 2012) (regarding claims of racial discrimination in employment)³; *In Re Telectronics Pacing Systems, Inc.*, 172 F.R.D. 271 (S.D. Ohio 1997) (regarding product liability claims). Though I’ve attempted to focus on actions unrelated to product liability and similar consumer claims, these are the bulk of caselaw on issue classes. Even when these suits are against public entities or involve civil rights claims, the follow-on actions contemplated are invariably for monetary, not injunctive, relief. The *Nassau* litigation discussed *infra* is presented as a typical case of issue class litigation against the government.

ii. *Brito*

The only case discovered so far in which non-monetary follow-on actions were contemplated is *Brito v. Barr*, 395 F. Supp. 3d 135 (D. Mass.), *modified*, 415 F. Supp. 3d 258 (D. Mass. 2019), *aff’d in part, vacated in part, remanded sub nom. Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021). In that case, IRP and others brought a class action challenging procedures at immigration court bond hearings. The court certified a 23(b)(2) class – not an issue class. *Brito v. Barr*, 395 F. Supp. 3d at 149. This case

³ In *McReynolds*, the putative class was for both a liability determination and class-wide injunctive relief. *McReynolds*, 672 F.3d at 483. The follow-on actions contemplated were for monetary relief, and the court specifically contemplated “hundreds of separate suits for backpay [and other monetary remedies]”. *Id.* at 492.

predates *Aleman* and so the court held that 8 U.S.C. § 1252(f)(1) did not bar declaratory nor injunctive relief for the class. *Id.* at 145. The court then declared that the bond procedures at hand were inadequate and so issued declaratory relief and a corresponding permanent injunction. *Brito v. Barr*, 415 F. Supp. At 271. In so doing, however, it explicitly contemplated the use of individual habeas petitions to challenge the continued detention of those subjected to the inadequate procedures, going so far as to require the government to “produce to class counsel certain information regarding each member of the Post-Hearing Class in order to facilitate individual habeas petitions challenging their continued detention.” *Id.* at 263. It did so because whether individuals deserved new bond hearings was a highly individualized and fact-dependent inquiry that did not lend itself to class certification. *Brito v. Barr*, 395 F. Supp. 3d at 148. In short, the district court adopted almost exactly the same approach we would want a court to take in an issue class case, although a 23(b)(2) class was used here.

In doing so, the *Brito* court cited to *Reid v. Donelan*, F. Supp. 3d 201 (D. Mass. 2019), in which the same judge (C.J. Patti Saris) held that the mandatory detention provision of the INA violates due process when detention becomes “unreasonably prolonged,” and issued an injunction stating the factors to be considered in the determination of detention length reasonableness. *Id.* at 228-29. The First Circuit reversed this decision on the merits in *Reid v. Donelan*, 17 F.4th 1 (1st Cir. 2021), and also rejected the district court’s class certification. *Id.* at 11-12. The circuit court wrote that “[N]o precedent of which we are aware supports using a properly certified class as a bootstrap to then adjudicate, on a class-wide basis, claims that hinge on the individual circumstances of each class member.” *Id.* at 11.

This suggests hostility on the part of the First Circuit to accept uses of class actions like that of the *Brito* court. Indeed, in *Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021), the First Circuit reversed the district court in every respect except the part of its declaratory judgment that prospectively declared a requirement that the government prove danger or flight risk by certain standards to deny noncitizens bond – that is, it vacated a declaration that immigration judges must consider ability to pay and alternatives to detention as well as both injunctions. *Id.* at 256-57. The circuit court’s reversal of the class certification was a blow to the individual habeas petition strategy that the district court contemplated.

I have not come across habeas petitions based on *Brito* filed after the First Circuit judgment. Before the appeal was decided, however, at least ten habeas petitions were filed in the district of Massachusetts relying in part on the district court decision. See e.g., *Osorio-Ramirez v. Hodgson*, 439 F. Supp. 3d 10 (D. Mass. 2020) (pending appeal); *Rubio-Suarez v. Hodgson*, No. 20-10491-PBS, 2020 WL 1905326 (D. Mass. Apr. 17, 2020); *Alsharif v. Donelan*, No. 20-30030-PBS, 2020 WL 3232476 (D. Mass. May 14, 2020).

iii. *In re Nassau County Strip Search Cases*

The *In re Nassau County Strip Search Cases* litigation does not provide the examples we are looking for but does explicitly contemplate this sort of strategy; it is also a landmark case in the development of issue-class jurisprudence. The litigation arose out of a “blanket policy” of strip-searching newly admitted misdemeanor detainees in Nassau County. *In re Nassau County Strip Search Cases*, 461 F.3d at 222. The plaintiffs alleged violations of the Fourth, Fifth, Eighth, and Fourteenth Amendment rights under the federal Constitution as well as of their rights under Article 1 § 12 of the New York State Constitution. *Id.* The defendants conceded their liability and a judgment to that effect was entered in

favor of the plaintiff class – which was a 23(c)(4) issue class. *Id.* at 224. The district court made a further judgment of general damages for all class members. *Augustin v. Jablonsky*, 819 F. Supp. 2d 153, 156 (E.D.N.Y. 2011).

The liability judgment was a declaratory judgment of the sort that we might seek. Although the court did later decide on general damages, the defendants successfully moved to decertify the class for special damages – i.e. emotional distress damages. *Id.* In so doing, the court specifically contemplated appointing a Special Master to hold “mini-trials” to determine individual victims’ emotional damages. *Id.* at 175. However, given that it doubted the efficiency of such a process relative to “requiring former class members to commence their own individual actions should they elect to pursue claims for special damages” it opted to simply decertify the class on the issue. *Id.* at 175-76. It further wrote: “Indeed, any strip search victim seeking special damages would have the benefit of a finding of liability on the part of the County and would need only present evidence as to their emotional distress damages.” *Id.*

It is not difficult to imagine a similar holding that, taking the facts of *Aleman*, there is a declaration of law on the statute’s requirement of bond hearings under certain circumstances and that individuals need only present evidence as to their qualification for said hearings in individual actions. On the other hand, the most obvious difference our *Aleman* hypothetical has with *Nassau* is that in *Nassau* there was a need for individualized determinations to set the amount of emotional damages due, so individual actions make a great deal of sense. Meanwhile, in *Aleman*, the remedy would be uniform, so the individual cases are plainly an attempt to work around the bar on class-wide injunctive relief rather than the natural method of resolving the claims.

A further problem is that I have found almost none of the follow-on litigation that the court contemplated. In *Stuart v. Cnty. Of Nassau*, No. 17-cv-6831DRHAKT, 2021 WL 1254550 (E.D.N.Y. Apr. 5, 2021), *aff’d*, No. 21-1187-cv, 2022 WL 2204177 (2nd Cir. June 21, 2022), an individual brought such an action. However, since the initial declaratory judgment was issued, the Supreme Court, in *Florence v. Bd. of Chosen Freeholders of Cnty. Of Burlington*, 566 U.S. 318 (2012) held that the sort of search at issue was not a constitutional violation. Given the intervening change in federal law, the district court vacated declaratory judgment as to the federal constitutional claims in *In re Nassau Cnty. Strip Search Cases*, 958 F. Supp. 2d 339 (E.D.N.Y. 2013). As such, the *Stuart* court dismissed the case as it found no federal constitutional claim and declined to exercise supplemental jurisdiction over the state constitutional claim. *Stuart*, 2021 WL 1254550 at *1.

The only other such follow-on case I’ve identified is *Lopez v. Nassau Cnty. Sheriff’s Dep’t*, No. 17-cv-3722DRHGRB, 2020 WL 7078535 (E.D.N.Y. Dec. 3, 2020), which was dismissed for failure to meet the statute of limitations. *Id.* at *4-5. Searches of citing references for the major opinions in the *Nassau* litigation in New York state courts have turned up no follow-on suits there. Conversations with Prof. Richard Clary – who teaches courses on complex and class action litigation – suggest that this is likely because the defendants quickly settled any additional suits brought.

C. Group Litigation and Injunctions

While several forms of injunctive relief are possible, as outlined above, the most conventional form we might seek is an order to the relevant agency requiring that they take some action on a class of cases, e.g., grant bond hearings, provide resources, reconsider denials, etc. One of the immediately apparent workarounds to the *Aleman* bar on class-wide injunctions of this sort is an

injunction encompassing a group of discrete, identified individuals rather than a categorically defined class. That is, bringing a case on behalf of two, ten, thirty, or even hundreds of named individuals. This is an attractive option because it would allow for preliminary relief as opposed to requiring litigating a case to completion as both § 2202 and individual follow-on actions to an issue class would. Note that this is an entirely separate approach from seeking enforcement of a class-wide declaratory judgment.

The most obvious challenge to doing so is the following section of the majority written by Justice Alito in the *Aleman* case: “A literal reading of that language [on the availability of individual injunctive relief] could rule out efforts to obtain any injunctive relief that applies to multiple named plaintiffs (or perhaps even rule out injunctive relief in a lawsuit brought by multiple named plaintiffs.” *Aleman*, 142 S.Ct. at 2068. While that portion of the opinion – (II-B-2), which six justices signed on to – stated that “the Government [did] not advocate that [the Court] adopt such an interpretation and [it had] no occasion to do so in these cases” it is not difficult to imagine that, should such a case arise, the Supreme Court might easily hold this sort of relief is barred.

Rule 20 of the Federal Rules of Civil Procedure – “Permissive Joinder of Parties” – is the likely vehicle for such an action. Fed. R. Civ. Pro. 20. To be joined under Rule 20, there are two requirements: 1) a right asserted by each plaintiff or against each defendant must arise out of the same transaction or occurrence or series of transactions or occurrences and 2) some question of law or fact common to all the parties will arise in the action. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure* § 1653 (3d ed. 2022). These requirements have been deemed satisfied in cases analogous to ones we might bring. See e.g., *Jean v. Meissner*, 90 F.R.D. 658 (S.D. Fla. 1981) (allowing joinder of a class of Haitian plaintiffs and another class of Haitian petitioners in a habeas challenge to practices and procedures used by the INS in exclusion processing); *Alexander v. Fulton County, Ga.*, 207 F.3d 1303 (11th Cir. 2000) (upholding a district court’s joinder of 18 officers against a county sheriff alleging race discrimination under § 1981, § 1983, and Title VII).

One disadvantage to proceeding in this way is that the burdens of multiple plaintiffs are significant. In *Boribonne v. Berge*, 391 F.3d 852 (7th Cir. 2004), the Seventh Circuit discussed whether group habeas petitions were appropriate in light of the Prison Litigation Reform Act (PLRA). *Id.* The details of that debate are not relevant here, but the court pointed out that the language of the PLRA limited the number of weak or frivolous claims allowed *in forma pauperis*, and asserted that plaintiffs exposed themselves to having such findings count against them because a “prisoner litigating jointly under Rule 20 takes those risks for *all* claims in the complaint, whether or not they concern him personally.” *Id.* at 854-55. What specific risks this could pose for plaintiffs is a matter for further research; at the very least number-bars on certain motions under the INA may be worth looking into. Also, the rules of civil procedure require that all filings be served on all other plaintiffs, which can increase filing costs significantly. Fed. R. Civ. Pro. 5; *King v. U.S. Marshall Serv.*, No. 19-cv-1337-JPG, 2019 WL 6728893, *1 (S.D. Ill. Dec. 11, 2019).

Aside from the challenge that the language of *Aleman* itself poses, however, I have not found any formal limit on issuing injunctions concerning any number of individual plaintiffs. See generally Fed. R. Civ. Pro. 65. Logistically, obtaining an injunction for large numbers of plaintiffs may be difficult if a court requires that the test be satisfied with respect to each plaintiff. In *Adams v. Freedom Forge Corp.*, 204 F.3d 475 (3rd Cir. 2000), for example, over 100 plaintiffs sued over retirement benefits and moved for a preliminary injunction. They later sought class certification, but for the instant opinion the Third Circuit held that the plaintiffs needed not be treated as a class. *Id.* at 490-91. The

court further held that the eleven plaintiffs who testified at the preliminary injunction hearing did not all provide evidence of irreparable harm, and so vacated the district court's preliminary injunction with respect to those plaintiffs. *Id.* at 491. It also vacated the preliminary injunction with respect to all non-testifying plaintiffs and wrote:

“In order to obtain a preliminary injunction that would apply to each one of them, the plaintiffs would have had to present affidavits or other evidence from which one could at least infer that each of them was so threatened. Instead, the plaintiffs only presented evidence from which a court could infer that some of them were threatened with harm. . . proof by association in a law suit, or proof by “common sense,” will [not] suffice. *Id.* at 488.

The court explicitly rejected treating the plaintiffs as a class and held on that basis that even assertions that “most” of the plaintiffs suffered a risk of harm, it could not uphold the injunction as to plaintiffs who did not present evidence. *Id.* This does not entirely preclude an injunction for all plaintiffs, but significantly raises the evidentiary bar as proof through representatives that allows inferences about the rest of the class is not possible. *Id.* at 487. That said, the court did contemplate simple affidavits as a method of proof. *Id.* at 489.

Other similarly situated cases where courts have before them a collection of plaintiffs who have filed for class certification – but not yet resolved that matter – seeking an injunction are understandably rare. In a few, courts have chosen to treat the group as a class for this stage of proceedings, *see e.g., Lapeer Cty. Med. Care Facility v. State of Mich. Through Dep’t of Soc. Servs.*, 765 F. Supp. 1291 (W.D. Mich. 1991); *Hinckley v. Kelsey-Hayes Co.*, 866 F. Supp. 1034 (E.D. Mich. 1994), but this would be inapplicable in our case as we would be unable to seek injunctive relief as a class, and so no certification would be pending. In one case, *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261 (W.D. Mich. 1990), *aff’d*, 948 F.2d 1290 (6th Cir. 1991), the court similarly applied a class-like standard to grant a preliminary injunction where certification was pending but did so without explicitly recognizing that it was applying that standard because of the pending certification. This is, however, a flimsy basis on which to hope for such a standard ourselves and it seems that seeking an injunction for many named plaintiffs will require greater individualized evidentiary support than would doing so for a class. *See generally M.S. v. Dept. of Homeland Sec.*, No. 20-cv-1325, 2020 WL 7496498, n. 1 (D. Minn. Aug. 8, 2020) (“Most of the problems in this matter stem from the fact that the group habeas petition submitted by petitioners is necessarily unwieldy Moreover, the *Zadvydas* claims raised . . . turn on factual issues specific to each individual petitioner, such as the length of . . . detention, the date that the petitioner's removal order has become final, and the likelihood of . . . removal in the foreseeable future.”).

While these sorts of group actions may be logistically difficult, I have not encountered any case in which a court has refused to act on grounds that there are too many individual plaintiffs. *See also* Fed. R. Civ. Pro. 20 (failing to mention any numerical limit on joinder). We should also bear in mind the Court's warning in *Aleman* about the literal meaning of 8 U.S.C. 1252(f)(1) and the fact that the larger a case seeking group-wide injunctive relief, the more blatantly it will seem a naked attempt to circumvent the Court's ruling.

D. The nature of injunctive relief.

This memo cannot address this question as priority research questions have expanded in other directions and because of time constraints. What sort of relief we might be able to obtain despite *Aleman*, including reporting, monitoring, and so on is an important question for future research.

As of writing, current sources for briefing on the scope of the “enjoin or restrain” language from 8 U.S.C. § 1252(f)(1) include:

- Briefing by Public Citizen in the immigration priorities case argued this week at the Supreme Court (captioned *Texas v. United States*, 40 F.4th 205 (5th Cir. 2022) below) arguing that § 1252(f)(1) doesn’t bar APA § 706 vacatur as a remedy.
- Our petition for *en banc* review in *Dubon Miranda*, arguing that § 1252(f)(1) places on limit on declaratory relief and is a remedial – not jurisdictional – limitation.
- The NYCLU memo on the availability of reporting under 28 U.S.C. § 2202 arguing that reporting is less restrictive than conventional remedial injunctions allowed under § 2202. After *Aleman*, this argument may not hold.
- Tomas Arango and Lily Novak’s August 5 memo on APA § 705 relief after *Aleman* outlining arguments that a) all forms of § 705 relief are unavailable after *Aleman* and b) that § 705 stays, though not injunctions, are still available.

CONCLUSION

This preliminary research has not turned up any insurmountable barriers to our three proposed alternatives to class-wide injunctive relief: § 2202 motions, individual follow-on actions to issue class declaratory judgments, and group litigation for injunctions. Each method, however, suffers from significant drawbacks. § 2202 motions would require litigating a case to completion and may also require that we show further relief is “necessary or proper,” which – given courts’ understanding of declaratory judgments against federal officers as essentially injunctive – may mean we cannot obtain relief until we demonstrate that the government has failed to comply with a declaratory judgment. Individual follow actions are almost completely unprecedented outside of suits for monetary relief. There are no theoretical barriers to this strategy, though it would require litigating a case to completion and then bringing numerous other suits. Further, the most closely analogous caselaw does not inspire confidence; the First Circuit, at least, seems hostile to this approach. Finally, group litigation for injunctions suffers from the primary defect that the *Aleman* majority itself cautioned the court is likely willing to bar them. These suits are also logistically complex, more expensive, and may face heightened evidentiary burdens compared to class injunctions.

Some questions for further research include how organizational plaintiffs might be able to enforce declaratory judgments and more on the nature of relief that falls within the “enjoin or restrain” bar in *Aleman*.

Applicant Details

First Name **Elyse**
 Middle Initial **Shir**
 Last Name **Ardaiz**
 Citizenship Status **U. S. Citizen**
 Email Address ardaiz@bu.edu
 Address

Address**Street****36 Quint Avenue, Apt 4****City****Boston****State/Territory****Massachusetts****Zip****02134****Country****United States**

Contact Phone
 Number **5713378835**

Applicant Education

BA/BS From **College of William and Mary**
 Date of BA/BS **May 2019**
 JD/LLB From **Boston University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12202&yr=2009
 Date of JD/LLB **May 12, 2024**
 Class Rank **25%**
 Law Review/
 Journal **Yes**
 Journal(s) **Boston University Law Review**
 Moot Court
 Experience **Yes**
 Moot Court
 Name(s) **Edward C. Stone Moot Court**
Homer Albers Prize Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations	Just the Beginning Organization
---------------	---------------------------------

Recommenders

Mccloskey, Jennifer Taylor
jataylor@bu.edu
(617)353-3199
Hylton, Keith
knhylton@bu.edu
(617) 353-8959
Leonard, Gerald
gleonard@bu.edu
(617) 353-3138

This applicant has certified that all data entered in this profile and any application documents are true and correct.

E. SHIREEN ARDAIZ

36 Quint Ave. #4, Allston, MA 02134 | 571-337-8835 | ardaiz@bu.edu

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am a rising third-year law student at Boston University School of Law writing to apply for a one-year clerkship in your chambers beginning in September 2024.

At BU Law, I have developed clear and effective writing through my work as a staff member and Senior Note Development Editor of the *Boston University Law Review* and my participation in the Edward C. Stone Moot Court Competition, in which I won Best Brief. I look forward applying those skills in the coming year as a student attorney in BU Law's Defenders Program. Beyond my academic experiences, my work prior to law school has prepared me to contribute positively to your chambers. While waiting tables full-time as an undergraduate student, I worked collaboratively with a wide range of personalities in a high-pressure environment while remaining dependable, compassionate, and level-headed. As a Teach For America corps member balancing classroom instruction, lesson planning, and grading hundreds of papers every week, I learned to meet tight deadlines without sacrificing my meticulous attention to detail. I hope to bring these same qualities to your chambers as a law clerk after graduation.

My resumé, transcript, and writing sample are attached to this application. My GPA reflects four semesters of grades, but my official transcript has not yet been made available; I will upload an updated transcript when it is released later this week. My letters of recommendation from Professors Keith N. Hylton (617-353-8959), Gerald F. Leonard (617-353-3138), and Jennifer McCloskey (617-353-3199) will arrive separately.

Please let me know if I can provide any additional information. Thank you for your time and consideration.

Respectfully,



E. Shireen Ardaiz

E. SHIREEN ARDAIZ

36 Quint Ave. #4, Allston, MA 02134 | 571-337-8835 | ardaiz@bu.edu

EDUCATION

Boston University School of Law

Boston, MA

J.D. Candidate

Expected May 2024

GPA: 3.74 (Top 20% = 3.76)

Honors: *Boston University Law Review* – Senior Note Development Editor (2023-24), Editor (2022-23)
Homer Albers Prize Moot Court Competition – Quarterfinalist (2023)
Edward C. Stone Moot Court Competition – Best Brief (2022)
International Negotiation Competition – U.S. National Representative (2022)
ABA Negotiation Competition – BU Co-Champion, National Semifinalist (2021-22)
Dean's Award in Torts (2021)

Leadership: Middle Eastern and South Asian Law Students Association – President (2022-23)
Negotiation and Client Counseling Competitions – Co-Chief Director (2022-23)

College of William & Mary

Williamsburg, VA

B.A., Hispanic Studies; Minors in Economics and Teaching ESOL

May 2019

PROFESSIONAL EXPERIENCE

Wilkinson Stekloff LLP

Washington, D.C.

Summer Associate

Expected July 2023

Cooley LLP

Washington, D.C.

Business Litigation Summer Associate

May 2023 – Present

Boston University School of Law

Boston, MA

Research Assistant to Professor Keith N. Hylton

January 2023 – Present

- Research and outline article analyzing application of federal antitrust law to state, sub-state, and hybrid actors.
- Edit and Bluebook articles and book chapters on topics in antitrust, law and economics, and tort law.

Teaching Assistant, LLM in American Law Program

August 2022 – November 2022

- Provided supplemental instruction for Criminal Law for LLMs and Introduction to American Law.

Massachusetts Supreme Judicial Court

Boston, MA

Judicial Extern to the Honorable Dalila A. Wendlandt

January 2023 – April 2023

- Researched topics in statutory interpretation, constitutional history, criminal procedure, and legal ethics.
- Drafted bench memorandum, summaries of petitions for further appellate review, and bar discipline order.

Amazon.com, Inc.

Arlington, VA

Day One Legal Academy Intern

July 2022

- Researched current and proposed biometric data privacy laws to inform Amazon One product strategy.

Haynes and Boone, LLP

Washington, D.C.

Summer Associate & 1L LCLD Scholar

May 2022 – July 2022

- Researched and drafted memoranda on topics in advertising, intellectual property, and food and drug law.
- Evaluated cosmetic, drug, and supplement packaging for compliance with FDA and FTC regulations.
- Acted as point of contact for clients in pro bono immigration and housing cases in English and Spanish.

Teach For America Miami-Dade

Miami, FL

Eighth Grade English Teacher & Grade Level Chair, Jose De Diego Middle School

June 2019 – June 2021

- Raised average student literacy score 2+ grade levels through self-designed lessons in reading and writing.

PRO BONO

Discovering Justice

Boston, MA

Mock Juror and Recruitment Volunteer

December 2022 – Present

- Serve as juror in youth mock trial competitions; identify potential judges and coaches in local communities.

Restore the Fourth

Virtual

Litigation Working Group Volunteer

December 2022 – February 2023

- Research origins of procedural due process for vehicle owners in civil forfeiture proceedings for amicus brief.

LANGUAGES & INTERESTS

Fluent in Spanish. Enjoy playing tennis and reading literary fiction. Experienced in aquaculture and urban farming.

BOSTON UNIVERSITY SCHOOL OF LAW

Name: ARDAIZ, ELYSE S

Date Entered: 09/07/2021

Colleges and Degrees:

COLLEGE OF WILLIAM AND MARY, B.A. 5/11/2019

Degree Awarded:

Date Graduated:

Honors:

Other Law School Attendance:

Academic Record						Credits	Grades	
Semester 1 - 2021 -2022								
CIVIL PROCEDURE (D)				COLLINS		4	A-	
CONTRACTS (D)				O'BRIEN		4	B+	
LAWYERING SKILLS I				MCCLOSKEY		2.5	A	
TORTS (D1)				BORENSTEIN		4	A+	
Semester 2 - 2021 -2022								
CONSTITUTIONAL LAW (D)				WEXLER		4	A-	
CRIMINAL LAW (D)				LEONARD		4	A	
LAWYERING LAB				VOLK ET AL		1	P	
LAWYERING SKILLS II				MCCLOSKEY		2.5	A-	
MOOT COURT				MCCLOSKEY		-	P	
PROPERTY (D)				LAWSON		4	B	
Semester 3 - 2021 -2022								
BUSINESS FUNDAMENTALS				WALKER/TUNG		-	P	
Year	Hours	Weighted Points	Weighted Average					
1st	29/30	107.25	3.70					
Semester 1 - 2022 -2023								
CRIMINAL PROCEDURE: ADJUDICATORY				LEONARD		3	A-	
ECONOMICS OF IP LAW (S)				HYLTON		3	A+	
INTRO TO FEDERAL INCOME TAXATION				FELD		4	A-	
LAW REVIEW - 2L MEMBER						1	CR	
TRADEMARK & UNFAIR COMPETITION				DOGAN		3	A-	
Semester 2 - 2022 -2023								
EVIDENCE				DONWEBER		4	A-	
JUDICIAL EXTERNSHIP PROGRAM: FIELDWORK						4	P	
JUDICIAL EXTERNSHIP PROGRAM: SEMINAR				SRAGOW LICHT		1	A	
LAW REVIEW - 2L MEMBER						1	CR	
TAXATION OF CORPORATIONS & SHAREHOLDERS				FELD		3	A-	
Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average		
2nd	21/27	79.80	3.80	50/57	187.05	3.74		
Semester 1 - 2023 -2024								
CRIMINAL TRIAL ADVOCACY				WILSON		3	*	
CRIMINAL TRIAL PRACTICE I				WILSON		5	*	
FEDERAL COURTS				YACKLE		4	*	
FOOD, DRUG & COSMETIC LAW				MILLER		3	*	
Semester 2 - 2023 -2024								
CRIMINAL TRIAL PRACTICE II/DEFENDERS				STAFF		8	*	
EFFECTIVE & ETHICAL DEPOSITIONS (B1)				BROWNE		3	*	
LIFE SCIENCES GENERAL COUNSEL				SHERBET		2	*	
SUPREME COURT DECISIONMAKING				BEERMANN		3	*	
Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average	Total Hours	Final Average
3rd			0.00	50/57	187.05	3.74	50/57	3.74

1974 Family Educational Rights and Privacy Act Information

The information contained on this transcript is not subject to disclosure to any other party without the expressed written consent of the student or his/her legal representative. It is understood this information will be used only by the officers, employees and agents of your institution in the normal performance of their duties. When the need for this information is fulfilled, it should be destroyed.

Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten
Aida E. Ten, Registrar

Date Printed: 6/12/2023

Boston University School of Law Transcript Guide

SYMBOLS OR ABBREVIATIONS

AUD	Audit	H	Honors
CR	Credit	NC	No credit
P	Pass	F	Fail
W/D	Withdrawal from course		
*	Indicates currently enrolled		
(C)	Clinical		
(S)	Seminar		
(Y)	Year-long course		

Academic Qualifications – JD Program: The School of Law has a letter grading system in courses and seminars. The minimum passing grade in each course and seminar is a D. Beginning with the Class of 2017, a minimum of eighty-five passing credit hours must be completed for graduation. Prior classes required a minimum of eighty-four passing credit hours. The minimum average for good standing is C (2.0) and the minimum average for graduation is C+ (2.3). Prior to 2006 the minimum average for good standing and graduation was C (2.0).

GRADING SYSTEM

1. Current Grading System The following letter grade system is effective fall 1995. The faculty has set the following as an appropriate scale of numerical equivalents for the letter grading system used in the School of Law:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-30%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	0-10%
D, F	0-5%

2. Fall 1995-Spring 2008

For first-year courses with enrollment of twenty-six or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-25%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	5-10%
D, F	0-5%

3. 1991 Changes to Letter Grade System.

The curve is mandatory for all seminars or courses with enrollments of twenty-six or more. Grade Number Equivalent Curve

A+	4.5	
A	4.0	15-20%
B+	3.5	
B	3.0	50-60%
C+	2.5	
C	2.0	20-35%
D	1.0	
F	0	

The median for all courses with enrollments of twenty-six or more is B. For smaller courses, a median of B+ is recommended but not required.

GRADES FOR COURSES TAKEN OUTSIDE THE SCHOOL OF LAW

Grades for courses taken outside of BU Law are recorded as transmitted by the issuing institution or as CR. Credit toward the degree is granted for these courses and no attempt is made to convert those grades to the BU Law grading system. The grade is not factored into the law school average.

CLASS RANKS

BU Law does not rank students in the JD program with the following exceptions:

Mid-Year Ranks

Effective May 2014, the Registrar is authorized to release the g.p.a. cut-off points to the top 5%, 10%, 15%, 20%, 25% and one-third for the fifth semester in addition to third semester reporting adopted May 2013 and yearly reporting of the same.

Effective January 2013

For students who have completed their third semester, with respect to the cumulative average earned during the fall semester, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class. This is in addition to the yearly reporting described below.

Effective May 2011

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide grade point average cut-offs for the top 10 percent, 25 percent and one-third of each section.

For students who have completed their second year or third year, with respect to both the average earned during the most recent year and cumulative average, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class.

Class of 2008 and subsequent classes through April 2011.

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide g.p.a. cut-off points for the top 10 percent of each section.

For students who have completed the second year or third year, with reference to both the second-year or third-year g.p.a. and cumulative g.p.a., the Registrar will inform the top fifteen students in the class of their ranks and will provide g.p.a. cut-off points for the top 10 percent of the class.

Scholarly Categories (Based on yearly averages only)

Class of 2008 and subsequent classes:
First Year – the top five students in each first-year section will be

designated G. Joseph Tauro Distinguished Scholars. The remaining students in the top ten percent of each first-year section will be designated G. Joseph Tauro Scholars.

Second Year – the top fifteen students in the second year class will be designated Paul J. Liacos Distinguished Scholars. The remaining students in the top ten percent of the second-year class will be designated Paul J. Liacos Scholars.

Third Year – the top fifteen students in the third year class will be designated Edward F. Hennessey Distinguished Scholars. The remaining students in the top ten percent of the third-year class will be designated Edward F. Hennessey Scholars.

Graduate Program Transcript Guides

LL.M. in Taxation

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

The grade averages of continuing part-time students whose enrollment began before the fall 1995 semester were converted to the new number equivalents.

Fall 1991 to Spring 1995

From the fall 1991 semester through the spring 1995 semester, the following letter grading system was in effect for students who were graduated before the fall 1995 semester:

A+	4.5	C+	2.5
A	4.0	C	2.0
B+	3.5	D	1.0
B	3.0	F	0.0

Current Degree Requirements

Effective May 2016, completion of 24 credits. Minimum average of 2.3 and no more than one grade of D.

Spring 1993 to Fall 2015

Completion of 24 credits. Minimum average of 3.0 and no more than one grade of D.

Fall 1991 to Fall 1993

Completion of ten courses (20 credits). Minimum average of 3.0 (with no more than one grade below 1.0).

LL.M. in Banking and Financial Law

Current Grading System

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective April 2016, completion of 24 credits with a minimum average of 2.7 and no more than one grade of D or F.

Fall 2012 to Spring 2016

Completion of 24 credits with a minimum average of 3.0 and no more than one grade of D or F.

Fall 1991 to Fall 2012

Completion of ten courses (20 credits). Minimum average 3.0 (with no more than one grade below 1.0).

LL.M. in American Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

LL.M. in Intellectual Property Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
C-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

Executive LL.M. in International Business Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective Spring 2014, completion of twenty credits with a minimum g.p.a. of 3.0 including the successful completion (CR) of two colloquia.

Grading System prior to Spring 2014

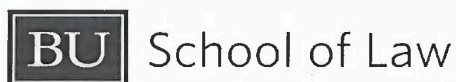
Honors (H)	Credit (CR)
Very Good (VG)	No Credit (NC)
Pass (P)	Fail (F)

Requirements Prior to Spring 2014

Completion of six courses (18 credits) and two colloquia (2 credits) for a total of 20 credits. The minimum passing grade for each course is Pass (P). The minimum passing grade for each colloquium is Credit (CR).

5/2016 rev2

Boston University's policies provide for equal opportunity and affirmative action in employment and admission to all programs of the University.



Transcript Guide Addendum

JURIS DOCTOR PROGRAM

LL.M. IN AMERICAN LAW PROGRAM

LL.M. IN INTELLECTUAL PROPERTY LAW PROGRAM

Grading System – Distribution Requirements

Effective Fall 2019

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	2-5 %
A+, A	15-25%
A+, A, A-	30-40%
B+ and above	50-70%
B	15-50%
B- and below	0-15%
C+ and below	0-10%
D, F	0-5%

Fall 2020

The distribution requirement for Fall 2020 upper-class courses with 26 or more students was suspended. Upper-level courses with 26 or more students were required to conform to a B+ median.

Effective Spring 2021

For all upper-level courses with an enrollment of 26 or more a B+ median is required with the following additional constraints:

A+	Maximum 5%
A+, A, A-	Minimum 30%
B and below	Minimum 10%
B- and below	Maximum 15%
C+ and below	0-10%
D, F	0-5%

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Shireen Ardaiz for a clerkship with you. Before I became the Director of Advocacy Programs at Boston University School of Law, I taught Lawyering Skills to a section of first-year students. Shireen immediately stood out to me as an engaged and committed law student. Over her first year of law school, that impression bore out, as Shireen was one of my most hard-working, enthusiastic, and successful students.

At BU Law, all first-year students participate in a year-long Lawyering Skills course as part of a small section of no more than twenty students, which allows each instructor to get to know the students very well. As you can see from her transcript, Shireen received an A in my class first semester, which reflects not only her natural facility for excellent legal analysis and clear writing, but also her ability to incorporate multiple modes of feedback to ultimately produce excellent work product. For example, I hold individual conferences with each student to go over assignment drafts for each assignment. Shireen came thoroughly prepared to every single conference we had, with a detailed agenda and a list of questions that demonstrated that she had thoroughly read and considered my comments. Shireen was also engaged during every class. Many first-year law students are hesitant to ask or answer questions in class, preferring instead to come to me after class or to send an email. Shireen always participated in class, to the benefit of all. Finally, Shireen always followed up with additional questions when she had them, to ensure that she understood what I was asking for.

I want to note here that Shireen's second semester grade in my class, an A-, is not a reflection of her ability or work. During her first year of law school, in her second semester, Shireen suffered from an extremely painful dental issue. Treatment was made more complicated due to an insurance problem. Initially, Shireen attempted to work through the pain without requesting an accommodation, but quickly realized that she needed to ask for help, something many first-year law students do not do. I gave her an extension on an assignment, but she was able to still complete her work without using the full extension. That said, the situation certainly had some impact on her work product. I know that her health situation also impacted her other spring semester grades. I believe her other grades and her work demonstrate her ability to excel.

In fact, Shireen earned much higher grades this fall despite being exceptionally busy. During her first two years of law school, Shireen has been involved in several of the programs I supervise. First, I worked with Shireen in our Negotiation and Client Counseling programs. During Shireen's first year of law school, she was a co-champion of our Negotiation Competition. She advanced to the ABA Regional Competition, which she and her teammate won, advancing them to the National Competition. Her team advanced to the semifinal round of that competition, which earned them an invitation to the International Negotiation Competition.

In her second year of law school, Shireen served as a Co-Chief Director of our Negotiation and Client Counseling Board. Although she and her co-directors encountered some hurdles in adjusting to a new board structure, Shireen ultimately executed a fun and successful internal Negotiation Competition, including running workshops for students and recruiting local attorneys to judge, and coaching our teams at their regional competitions. She took a supporting role in the spring, helping our Client Counseling Competition directors run an excellent competition during the very busy first week of the spring semester.

Additionally, Shireen competed in our Edward C. Stone Moot Court Competition during her 2L fall. She was assigned to work on what I felt was the competition's most challenging issue: whether a district court may certify a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure based on a presumption that an increase in index prices can demonstrate class-wide antitrust impact sufficient for common issues to predominate in an industry with individually negotiated prices. Shireen excelled, analyzing and breaking down this complex procedural issue into clear, compelling arguments. She earned an award for Best Brief and an invitation to the Homer Albers Prize Competition, our spring honors competition.

Despite a busy spring semester, Shireen worked just as hard on the Albers problem as on everything else. In Albers, she was assigned to brief and argue a challenging and charged issue: whether the Second Amendment protects the right of undocumented persons to possess firearms. Her written work was once again excellent. Her research was thorough, her analysis was powerful, and her writing was clear and polished. I later learned that during the competition, in the spirit of collegiality (and within the rules!), Shireen organized several of her competitors to moot each other, so that they could all improve their oral arguments. In fifteen years, I have never had an Albers competitor take it upon themselves to organize moots to the benefit of all, and I was very impressed, but not surprised, to learn that Shireen was the driving force behind these practices. The extra effort paid off, as her argument scores helped her team advance to the quarterfinal round of the competition.

Finally, I want to emphasize that beyond Shireen's research and writing skills, she is a mentor to other students who strives to support her colleagues. This year, Shireen actively worked to grow MESALSA, organizing a mentorship program and events with law firms, among other services. She has worked to improve BU Law's diversity and inclusion, both on Law Review and more broadly. On a personal note, I've enjoyed teaching and working with Shireen. Like all law students, she sometimes stumbles, but I've rarely worked with a law student so interested in taking those mistakes and not just avoiding them in the future, but actively learning from them and improving. She not only is engaging and intelligent, but also truly cares about making a difference, both at BU Law and in the legal field. I believe that Shireen's particular strengths—her facility with legal research and analysis, her

Jennifer Taylor McCloskey - jataylor@bu.edu - (617)353-3199

indomitable drive, and her collegiality—will make her an excellent law clerk. Therefore, I strongly recommend her for the position. Please contact me if you have any questions about her application.

Very truly yours,

Jennifer Taylor McCloskey, Esq.
Director, Advocacy Programs

Jennifer Taylor Mccloskey - jataylor@bu.edu - (617)353-3199

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Elyse Shireen Ardaiz (Shireen) has asked me to provide a letter of recommendation for her clerkship application and I am delighted to do so. Shireen was a student in my Economics of Intellectual Property Law seminar in the fall semester of 2022 at Boston University School of Law. The seminar is based largely on my book with Ron Cass, *Laws of Creation* (Harvard University Press, 2013), which provides an economic justification for the major doctrines of intellectual property law. Ron and I saw the book as necessary to counter the anti-intellectual property arguments that had come out of the legal academy over the last thirty years. The seminar is not designed to brainwash students but to give them a rigorous grounding in the economic considerations relevant to intellectual property. Shireen received an A+ in the seminar. She also worked for me as a research assistant in the spring semester of 2023.

As the grade indicates, Shireen did an excellent job in the seminar, taking part with thoughtful comments in the course meetings, and equally thoughtful written commentary on the readings. Her paper for the seminar, on extraterritoriality and trademark law, was an innovative, excellently written, and interesting project. I learned a great deal from her paper. Her paper argues that the extraterritoriality rules applicable to antitrust law should be extended to trademark law, and makes an impressive argument that the two bodies of law are sufficiently similar that the reach of the laws should be the same in both areas. I thought this was a neat way of resolving the extraterritoriality problem, because the problem viewed in the abstract is quite hard to solve. Were I to approach the problem on my own, I might try to answer it on the basis of economic incentive arguments, but I don't think I would have reached an answer that is more persuasive than her answer.

I have students in my seminar present their papers to the class late in the term. Students are often shy or reluctant about presenting their work. Shireen, however, was a reliable and excellent presenter. If I recall correctly, she offered to do an extra presentation near the end of the term, but I had to tell her that she had filled her quota of presentations for the seminar.

Shireen has edited a number of my papers as a research assistant, and helped with research as well. I have found her guidance very helpful. She is prompt and clear about what she can get done, within a certain time frame. I find this alone extremely helpful because I have had many research assistants who have done excellent work, but have not been very good at explaining what they will complete and within what time frame. Moreover, I am aware that she is heavily involved in many organizations in the law school, often with leadership positions, in addition to Law Review. She cares deeply about these organizations. I have had many conversations with her about Law Review, and her ideas for improving the organization. We have discussed ways in which Law Review could be reformed to make the experience more valuable for students.

As this letter hopefully conveys, I have been quite favorably impressed by Shireen, and would be only too happy to provide additional comments on her behalf if there is any need for them. I believe she has a great career ahead of her.

Sincerely,

Keith N. Hylton

William Fairfield Warren Distinguished Professor
Boston University
Professor of Law
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
tel: 617-353-8959

Keith Hylton - knhylton@bu.edu - (617) 353-8959

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in enthusiastic support of Shireen Ardaiz's application for a clerkship in your chambers. Shireen is very smart, extremely hard-working, organized, and ambitious. And she's a talented writer. In short, she has all the qualities of an excellent clerk. After being impressed by her in both first-year Criminal Law and upper-level Criminal Procedure, I can recommend her to you very strongly.

In Criminal Law, Shireen was a productively intense presence from the very beginning of the semester. A steady participant in class, she also frequently joined me at the podium or in office hours after class to ask questions about doctrine or, especially, to discuss the larger context in which criminal doctrine and criminal institutions work. Her curiosity was lawyerly but informed by a concern with the larger world and the impact that the law can and does have beyond its stated goals. All the while, her manner was the perfect combination of appropriately deferential and determinedly inquisitive about the issues that mattered most to her. I became a big fan early in the semester and looked forward especially to those moments where she challenged me with questions I couldn't fully answer about the real-world implications of some of the law we discussed. I recall especially her readiness to question me about exactly why and how we might discuss the sensitive topic of rape law in our class, given that this offense has always had a profound impact on some number of students in the room. After I agreed that it would be worth a try to take only volunteers on that subject—no cold-calling—she proved to be the first person with her hand up in class. It's not that she was so eager to talk about rape law in front of 75 classmates but that she felt a responsibility to support me in making the class work after she had lobbied me to go with the all-volunteer format. As expected, she performed admirably in discussing the case that she volunteered for. She followed up this strong semester in and out of the classroom with one of the best exams in the class, earning her A in the course. Shireen was one of that handful of students who could and did contribute to the course in a way that made it meaningfully better for herself, for her classmates, and for me.

In Criminal Procedure, Shireen's experience was a little different. Her third semester of law school began in a challenging way. She was both sick and overextended for much of the first half of the semester. As you can see from her resume, her ambitions led her to take on not just Law Review but Moot Court (where she was quite successful), leadership positions in student groups, and service as a teaching assistant. When combined with a full complement of demanding classes, it was really too much, as I told her at the time, and she has learned to commit herself more judiciously since that time. But, even as I thought she would drown in my course and elsewhere, she in fact finished strong and pulled out excellent grades. Her exam for me was not as comprehensively strong as in Criminal Law but still showcased her lawyerly smarts. She came out with an admirable A- in Crim Pro amid a successful semester across the board that included an A+ as well. And she did this without compromising her other ambitions: first, winning Best Brief in our moot court competition, which set her up to reach the quarterfinals in the next semester; and second, meeting all expectations on Law Review and earning a position on the editorial board for her third year. Her capacity to adjust mid-semester and find her way successfully through the workload she had assumed was enormously impressive to me, as was her capacity to absorb valuable lessons for the future.

Let me finish with the important subject of writing ability. As of now, I have not seen much finished writing from Shireen, apart from time-pressured exams. But I have seen just enough to be confident that she will give you the readable, concise, and analytically sharp memos and drafts that you may require of her. As noted, she won Best Brief in Moot Court and now mentors younger Law Review members in the writing of their Notes. Beyond that, though, I have also read part of her Moot Court brief and can confirm first-hand that she writes smoothly, clearly, and convincingly. You can judge for yourself, of course, but I feel very confident that she will give you written work product that will make your life easier every day.

In sum, Shireen has no downside as a clerkship applicant. I cannot tell you that she is the most accomplished student in her class, but I believe she is consistently effective in a way that many with higher grades cannot match. She really stands out for her capacity and desire to take on all the work you can give her while maintaining consistently high standards across all of her assignments. Over time, she may or may not prove to be in that rarefied stratum of truly brilliant clerks, but I don't believe that she will ever give you less than high quality work. I recommend Shireen Ardaiz to you with utmost confidence and enthusiasm.

Sincerely,

Gerry Leonard
Professor of Law
Boston University School of Law
765 Commonwealth Ave.
Boston, MA 02215
gleonard@bu.edu
617-353-3138

Gerald Leonard - gleonard@bu.edu - (617) 353-3138

E. SHIREEN ARDAIZ

36 Quint Ave. #4, Allston, MA 02134 | 571-337-8835 | ardaiz@bu.edu

Writing Sample

The attached writing sample is an excerpt from a bench memorandum I drafted as an extern in Justice Wendlandt's chambers at the Massachusetts Supreme Judicial Court. The memorandum contained six issues, of which I drafted two. For the sake of brevity, I have included only the fourth issue. The memorandum analyzes whether a detective's narration of his observations of video evidence was inadmissible lay testimony or admissible to rebut the defendant's allegation that the police investigation was inadequate (known in Massachusetts as a *Bowden* defense).

I am submitting this writing sample with permission from Justice Wendlandt. All names and identifying details have been changed to preserve confidentiality. I performed all of the research for this memorandum, and although it was lightly edited by the supervising law clerk, this memorandum is substantially my writing.

d. Detective's testimony about video evidence. i. Relevant facts and procedural history.

As part of the defendant's motion in limine to admit third-party culprit evidence, he moved to admit the ice cream parlor video footage. The trial judge allowed the admission of the video and advised that "the defense [might] cross-examine the lead investigator(s) about their investigation of Mr. Miller" because "[e]vidence of any investigation of him is relevant, will not cause confusion, and he is linked by time and place to the vicinity of the crime." As such, prior to Anderson's testimony, the trial judge advised that the Commonwealth could, in "anticipation" of the *Bowden* defense, "tell us everything about the investigation."

At trial, on direct examination, Anderson testified about what he observed in the ice cream parlor video footage and the significance of those observations to his investigation. In so doing, he referred to the movement of the silver vehicle, the attire of the individuals shown on camera, the identities of the individuals, and what he believed the video showed those individuals doing. The defense counsel successfully objected to instances in which the prosecutor's question or Anderson's testimony was ambiguous about whether it referred to what was shown on the video, as opposed to the conclusions Anderson drew from the video for the purposes of his investigation. After sustaining one such objection, explaining at sidebar that "there's a distinction between conclusions that the detective is drawing for the purposes of his investigation and what a jury can see," the judge instructed the jury that:

There's obviously a big difference between what you see on a video and what someone else tells you they saw on a video right? As for all evidence in a jury trial, it is for you to determine what you see and what significance, if any, what you see has to you. The same way you listen to the testimony of a witness and decide what significance, if any, that testimony has to you. On the other hand, this witness conducted an investigation. It's fair for the Commonwealth to ask him why he did what he did and what conclusions he drew from what he did, but that's the distinction. Whether it's video or anything else, his state of mind, his decision making, his conclusions are fair game for him to tell you about. . . . The

Commonwealth is going to make an effort to distinguish better in the questions between what this witness is seeing or concluding and your part of the job, which is always the same, which is to decide what you see and what you conclude.

The defense counsel did not object to the four portions of Anderson's testimony at issue: (1) that the driver leaving the scene was the defendant; (2) that the ice cream parlor video showed the victim slapping the defendant; (3) that the defendant was holding a gun; and (4) that Miller was standing away from where the shooting occurred.

The defense counsel asked for a jury instruction on identification by video in the final charge. The judge asked the defense counsel whether he was aware of any case law guiding such a jury instruction. The defense counsel suggested that the instruction given with Anderson's testimony would be acceptable. The judge indicated that while she thought a charge about all the evidence might be sufficient, she might refer to video evidence specifically. The final charge contained no specific instruction about video evidence. After the charge, the defense counsel stated he was content with the charge as given.

ii. Analysis on opinion testimony and jury instruction. The defendant argues that Anderson's narration of the ice cream parlor video footage was improperly admitted lay opinion evidence and that its inclusion, especially without a final jury instruction on video evidence, was "inadmissible and highly prejudicial." See *Commonwealth v. Wardsworth*, 124 N.E.3d 662, 684-85 (2019).

In support of his argument, the defendant likens his case to *Wardsworth*, in which this Court held that the admission of four police officers' repeated testimony about the extreme similarity between the defendant and the individual depicted on camera was improper. See 124 N.E.3d at 683-84. He also attempts to distinguish this case from *Commonwealth v. Grier* because here, the detective specifically testified to seeing the defendant on the surveillance footage. 191

N.E.3d 1003, 1026 (2022) (holding that detective’s testimony merely “not[ing] in passing that a ‘C’ was visible on the left chest area of the individual” on surveillance footage but never directly connecting with logo on defendant’s jacket did not cause unfair prejudice).

In response, the Commonwealth argues that because the defendant expressed his intention to raise a *Bowden* defense, he opened the door for investigators to testify about their investigative choices. *See Commonwealth v. Avila*, 912 N.E.2d 1014, 1023-24 (2009); *Commonwealth v. Lodge*, 727 N.E.2d 1194, 1201 (2000). The Commonwealth also analogizes Anderson’s testimony to that of the detectives in *Commonwealth v. Chin*, 144 N.E.3d 923 (2020), and contends that Anderson’s observations were not identification testimony because, as the motion judge explained, the defendant was “independently identified in numerous ways,” the video was not offered as an exhibit or used at trial for identification purposes, and all witnesses testified to their own personal observations while watching the video.

The Commonwealth’s comparison to *Chin* is inapposite. In *Chin*, the detectives “recounted their personal observations of what they saw in the video and compared those observations to their personal observations of the defendant’s car” because “the car shown on the video recordings was not physically available for the jury to consider.” 144 N.E.3d at 937. Here, Anderson had no personal familiarity with the defendant, and the defendant was not unavailable. Instead, *Commonwealth v. Suarez*, which compels the opposite result, is more appropriate. 129 N.E.3d 297, 306-07 (2019) (holding that detective’s lay testimony identifying defendant on video, which contributed no information that jurors could not glean from video themselves, was inadmissible).

The Commonwealth then distinguishes *Wardsworth* in two ways. First, it points out that in *Wardsworth*, it was unclear “from the record that a *Bowden* defense was meaningfully raised.”

124 N.E.3d at 686. Second, unlike here, the judge in *Wardsworth* “did not instruct the jury that the officers’ identification testimony was admissible only for the limited purpose of rebutting a *Bowden* argument.” *Id.* The Commonwealth responds to the defendant’s attempt to distinguish *Grier* by arguing that because the defendant never contested that he was at the ice cream parlor before and at the time of the shooting, the identification of the defendant on the surveillance footage was not prejudicial to the defense. The Commonwealth further argues that because the judge issued a limiting instruction immediately after the contested testimony, that instruction cured any resulting prejudice, and thus, the jury’s observations of the footage should control.

“[P]urportedly improper opinion evidence . . . objected to at trial” is reviewed “for prejudicial error.” *Grier*, 191 N.E.3d at 1025. Evidence which was “not objected to at trial, we review for a substantial likelihood of a miscarriage of justice.” *Id.* The defendant did not object to the admission of the ice cream parlor video footage or to the portions of the officer’s narration under review here, so the miscarriage of justice standard applies. *See id.*

In general, “[a] lay opinion . . . is admissible only where it is ‘(a) rationally based on the perception of the witness; (b) helpful to . . . the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge.’” *Id.* (quoting *Commonwealth v. Canty*, 998 N.E.2d 322, 328 (2013) (quoting Mass. G. Evid. § 701 (2013))). “Where the jury are capable of viewing video or photographic evidence and drawing their own conclusions regarding what is depicted, a lay witness’s testimony about the content of the video or photographs is admissible only if it would assist the jury in reaching more reliable conclusions.” *Id.* “Making a determination of the identity of a person from a photograph or video image is an expression of an opinion.” *Wardsworth*, 124 N.E.3d at 683 (quoting *Commonwealth v. Pina*, 116 N.E.3d 575, 592 (2019)). “When offered by a lay witness, such an opinion is admissible only where ‘the subject

matter to which the testimony relates cannot be reproduced or described to the jury precisely as it appeared to the witness at the time.” *Id.*

However, “if a defendant raises a *Bowden* defense, the Commonwealth has the right to rebut it” by “elicit[ing] testimony about what led the police to conduct the investigation in a particular way.” *Avila*, 912 N.E.2d at 1022.

Here, Anderson’s personal observations about the contents of the ice cream parlor footage would likely ordinarily be classified as lay evidence and would only be admissible if they met the requirements set out in Mass. G. Evid. § 701. As observations about “the content of the video or photographs,” Anderson’s testimony “is admissible only if it would assist the jury in reaching more reliable conclusions.” *See Grier*, 191 N.E.3d at 1025. If, as the defendant argues, this testimony was identification testimony, then it would likely not be admissible, because Anderson was not “more likely to correctly identify the defendant from the photograph [or video evidence] than is the jury.” *Commonwealth v. Vacher*, 14 N.E.3d 264, 279 (2014) (citation omitted); *see Grier*, 191 N.E.3d at 1025.

However, because the defendant announced his intention to present a *Bowden* defense, Anderson’s testimony, including his identification testimony, was likely admissible because it was relevant to determining the adequacy of the investigation. *See Avila*, 912 N.E.2d at 1023-24 (holding that detective’s testimony recounting witness’s statements of defendant’s guilt was admissible for purpose of rebutting allegations of inadequate investigation).

Admissibility of *Bowden* rebuttal evidence depends upon the defendant having “opened the door” while mounting his or her defense. *Avila*, 912 N.E.2d at 1026. A defendant “opens the door” where he or she “insert[s] into the case the relevance of the police judgment and decisions.” *Lodge*, 727 N.E.2d at 1201. When a defendant elicits only the portion of a larger

piece of evidence which benefits him or her, the defendant “open[s] the door” for the prosecution to give the whole story of that evidence “to prevent misleading the jury by a fragmentary presentation.” *See Avila*, 912 N.E.2d at 1026. The door is not “opened” where the prosecution “first introduce[s] the [specific] topic” to which the evidence is relevant, even if the defendant follows up with further questions on cross examination. *See id.* But if the central argument of the defense is to “attack[] the integrity and adequacy of the investigation throughout the trial, the Commonwealth [is] entitled to respond,” even when a *Bowden* defense has not been explicitly raised. *Commonwealth v. Wiggins*, 81 N.E.3d 737, 747 (2017).

Although part of Anderson’s contested testimony was elicited under direct examination, the defendant, by announcing his intention to raise a *Bowden* defense before trial and to rely upon surveillance footage to prove both the *Bowden* defense and the third-party culprit defense, “opened the door” to the Commonwealth to present “the whole story” of its investigation of the footage. *See Avila*, 912 N.E.2d at 1023-24 (holding that police testimony reciting witness’s statement and explaining credibility thereof was admissible to rebut defendant’s criticism of investigators’ choice to not to follow other leads). Though the prosecutor was first to examine Anderson on the contents of the surveillance footage, she did not “first introduce” the topic, but rather addressed the defendant’s overarching argument, which had already been introduced in motions in limine and in the defendant’s opening statement. *See Wiggins*, 81 N.E.3d at 747 (holding that *Bowden* rebuttal evidence was admissible where defendant did not raise *Bowden* challenge by name, but where central theory of case was misidentification and defendant alleged inadequate investigation).

Weighing the admissibility of *Bowden* rebuttal evidence:

is a delicate and difficult task, given the fine line between permissibly allowing a police officer to explain investigative decisions . . . and impermissibly allowing a

police officer to offer an opinion about the guilt of the defendant, the credibility of a witness for the Commonwealth, or the strength of the Commonwealth's case.

Avila, 912 N.E.2d at 1023. “[A] *Bowden* defense is clearly a two-edged sword: the more wide-ranging the defendant’s attack on the police investigation, the broader the Commonwealth’s response may be,” explaining not only why it did not pursue certain leads, but why it chose to pursue the defendant. *Id.* at 1024. “[T]he presentation of a *Bowden* defense can expand the usual evidentiary boundaries quite significantly.” *Id.* at 1025.

Thus, the admissibility of a law enforcement officer’s *Bowden* rebuttal testimony depends upon whether the testimony was explicitly connected to the officer’s investigative decisions. *Compare Grier*, 191 N.E.3d at 1024-26 (holding that officers’ identification testimony was admissible when presented in conjunction with officer’s thought process about investigation), with *Wardsworth*, 124 N.E.3d at 683-84 (holding that, absent emphasis on relevance to investigation, officers’ testimony about similarity of appearance between defendant and individuals on video was inadmissible). *Bowden* rebuttal testimony “followed directly by questions and answers . . . that explained more carefully the factors that led the police to focus on the defendant at that point” is more likely to be admissible. *Avila*, 912 N.E.2d at 1024. By contrast, “where the police detective respond[s] to a general question with a comprehensive account of the evidence against the defendant,” that testimony is inadmissible. *Id.*

Here, Anderson’s testimony about what he observed in the surveillance footage was likely admissible as an explanation of why he chose not to further investigate Miller and instead focused his investigation on the defendant. *See id.* (holding that detective’s explanation of reasons for focusing on defendant was admissible following questions about what factors motivated his investigative choices). The Commonwealth’s follow up questions about the significance of each of Anderson’s observations to his investigation suggest that this case is more

akin to the contextualized inquiries and targeted answers in *Avila* than to the general questions and broad answers in *Lodge*. Compare *id.* at 1024-25, with *Lodge*, 727 N.E.2d at 1201-02 (holding that detective’s recitation of “all the evidence against the defendant” in response to general question about why detective “had not done ‘any of those things that [defense counsel] asked’” was improper).

Finally, failure to repeat “a limiting instruction during the final charge” that was made earlier in the trial is not error. *Commonwealth v. Gouse*, 965 N.E.2d 774, 784 (2012). Where “[t]he judge’s instructions were clear, . . . we must presume the jury followed them.” *Commonwealth v. Morales*, 800 N.E.2d 683, 693 (2003). Because the jury received a limiting instruction immediately following Anderson’s testimony about his observations of the surveillance footage, it was likely unnecessary for the trial judge to repeat that specific limiting instruction during the final charge. See *Gouse*, 965 N.E.2d at 784; *Morales*, 800 N.E.2d at 693.

Applicant Details

First Name **Rosemary**
 Middle Initial **N.**
 Last Name **Ardman**
 Citizenship Status **U. S. Citizen**
 Email Address rdardman@umaryland.edu

Address

Address Street 1300 Saint Paul Street, #5 City Baltimore State/Territory Maryland Zip 21202 Country United States
--

Contact Phone Number **5128156058**

Applicant Education

BA/BS From **University of Texas-Austin**
 Date of BA/BS **December 2015**
 JD/LLB From **University of Maryland Francis King Carey School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=52102&yr=2011
 Date of JD/LLB **May 30, 2024**
 Class Rank **5%**
 Law Review/Journal **Yes**
 Journal(s) **Maryland Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Graber, Mark
mgraber@law.umaryland.edu
(410) 706-2767
Hoffmann, Diane
dhoffmann@law.umaryland.edu
(410) 706-7191
Carstens, Anne-Marie
acarstens@law.umaryland.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 5, 2023

The Honorable Juan R. Sanchez
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

Please consider my enclosed application for a clerkship in your chambers for the 2024-2025 term. I am currently a student at the University of Maryland Carey School of Law and will graduate in 2024. As the new Editor in Chief of the *Maryland Law Review* and a long-time employee of the ACLU of Maryland, my unique professional and academic experience has prepared me to effectively serve as a judicial clerk. I am passionate about public interest work, and your background as a public defender makes me particularly excited at the prospect of clerking with your chambers.

My unusual path to a legal career drives my deep commitment to public service. I started college at the age of thirteen and began supporting myself financially by working in restaurants a few years later. Throughout my teens, I struggled with the challenges of being on my own at such a young age, transferring schools and taking time off in response to financial and familial challenges. My experience persevering through these obstacles—and ultimately graduating with honors from the University of Texas—instilled me with compassion, curiosity, and resilience that continue to guide my professional goals.

In law school, I have gained research and writing experience that prepares me to effectively contribute to the work of your chambers. As the new Editor in Chief of the *Maryland Law Review*—and the first evening student to ever hold that role—I collaborate with top scholars around the country to publish innovative academic work, and I lead a time of fifty students through a complex and tight publication process. This opportunity to engage deeply with legal scholarship across a variety of fields positions me to thrive in the diverse work of judicial clerk.

I also have significant practical legal experience, particularly at the federal level. This summer, I am gaining exposure to federal civil litigation through an internship with the Special Litigation Section of the Civil Rights Division of the Department of Justice. Last year, I interned with the Federal Public Defender for the District of Maryland, where I drafted motions, prepared internal strategic memoranda, and observed a variety of federal criminal proceedings. Additionally, I have spent over six years as the assistant to the ACLU of Maryland's Executive Director, a role that has prepared me for the sensitive and collaborative nature of a judicial clerkship.

Within, please find my resume, my law school and undergraduate transcripts, two writing samples, and three letters of recommendation. Thank you very much for your consideration.

Sincerely,



Rosemary Ardman

ROSEMARY NADIA ARDMAN

512-815-6058 | rardman@umaryland.edu | 1300 Saint Paul Street #5, Baltimore, MD 21202

EDUCATION

University of Maryland Carey School of Law | Baltimore, MD | J.D. Candidate | Expected May 2024 | GPA 4.17

Honors: Editor in Chief, *Maryland Law Review*, Volume 83
 Paul D. Bekman Leadership in Law Scholar
 Sondheim Public Service Law Fellow
 Shale D. Stiller Public Interest Fellow
 CALI Award (highest grade): Criminal Law, Lawyering I, Lawyering II, Legal Profession,
 Constitutional Law I, Constitutional Law II, Lawyering III, Torts, Employment Law,
 Comparative Jurisprudence

International Coursework:

Zomba, Malawi: Environmental Justice, Public Health, and Human Rights (May 2023)
 Galway, Ireland: Comparative Constitutional Democracy (June 2022)

University of Texas at Austin | Austin, TX | B.A. English with Honors | Dec. 2015 | GPA 3.84

Honors: James F. Parker Memorial Essay Prize Runner-Up

PROFESSIONAL EXPERIENCE

Special Litigation Section, Civil Rights Division, U.S. Department of Justice | Washington, D.C.

Legal Intern

May 2023–Present

Assist with investigations into systemic unlawful conduct by state and local officials related to conditions of confinement, juvenile justice, and the institutionalization of people with disabilities. Complete legal research and writing projects to support litigation and compliance monitoring.

ACLU of Maryland | Baltimore, MD

Executive Coordinator & Board Liaison

Apr. 2021–Present

Manage projects for the Executive Director and Board of Directors. Serve on the Strategic Planning Leadership Team. Coordinate administrative and logistical matters for the executive department. Facilitate staff meetings. Supervise administrative support staff and volunteers.

Executive Assistant

Feb. 2017–Apr. 2021

Provided administrative support to the Executive Director and Board of Directors. Managed filing systems and archival projects. Assisted with office operations.

Acting Development Associate

May 2017–June 2019

Drafted grant proposals and reports worth over \$750,000 annually in areas including criminal justice reform, immigrants' rights, fair housing, and education rights. Planned and executed philanthropic campaigns. Managed the development database.

Legal and Policy Intern

Oct. 2016–Feb. 2017

Drafted legal documents and advocacy materials for a lawsuit challenging juvenile life without parole. Processed requests for legal assistance and corresponded with clients.

University of Maryland Carey School of Law | Baltimore, MD

Senior Legal Writing Fellow

Aug. 2022–Present

Provide feedback on student legal and scholarly writing. Lead 1L writing workshops and drop-in sessions. Offer guidance and support to incoming Legal Writing Fellows.

Legal Writing Fellow

Aug. 2021–May 2022

Competitively selected as one of eleven second-year students to staff the Writing Center, lead student writing workshops, and perform research and cite checking for legal writing faculty.

Research Assistant to Professor Michael Millemann

May 2021–May 2022

Prepared research memos on criminal sentencing and prisoners' rights. Performed cite checking and substantive editing on scholarly articles.